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W. Taylor

— THE CASE OF —

William D. Coleman.

Keines Mannes Rede,
Ist keines Mannes Rede,
Man soll sie billig hören beide.

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—No. 9 South Charles Street.—

—1878.—



THE CASE OF WILLIAM D. COLEMAN.

DANVILLE, MARCH 4th, 1878.

To GEO. D. WISE, ESQ. :
ATTORNEY FOR THE COMMONWEALTH,
FOR THE CITY OF RICHMOND. }

SIR :—Courts and juries—the theory is—may sometimes be invoked by a citizen for his own vindication. They were not devised exclusively for the purpose of making conviction, under the forms of public law, the inevitable consequence of accusation, under the motives of private enmity; though my own experience might suggest the contrary. But, in theory at least, their purpose, under our form of government, is a nobler one than that merely of a merciless avenger; it is also to vindicate the innocent, by acquittal, against false accusations. I propose to test this theory of the common law and our free institutions, and show that it can be reduced to practice here in the commonwealth of Virginia, and her capital city of Richmond.

To that end I address this communication to you, sir, as the prosecuting attorney for the commonwealth, and, as such, peculiarly the representative of the majesty of the LAW, and the chosen minister of JUSTICE.

The subject to which I invite your attention is stated as follows :

At the beginning of the late session of the general assembly the second auditor of the commonwealth made a communication to that body in which he stated his discovery of certain frauds against the commonwealth by means of funding a second time certain state bonds which had already been funded. A joint committee of the general assembly was raised to investigate the subject. This committee was fully invested with inquisitorial powers; authorized to send for persons and papers; directed to ascertain the real facts, and to do all other things in the premises, necessary and proper.

Near the close of the legislative session the said committee submitted its report, which was printed and laid before the two houses of the legislature. It contains a considerable amount of testimony, taken *ex parte* by the committee, embodies a summary of the said testimony in the form of a Report, and proposes a resolution to the general assembly, conditionally instructing the attorney general to take steps to recover the money value out of which the commonwealth has been defrauded. As the committee, however, made no suggestion touching any criminal prosecution it is to be inferred that it was left to the grand jury of the Hustings Court of Richmond city to take cognizance of the matter in its criminal aspect; the crime having been committed within the jurisdiction of that court.

But the grand jury have found no indictment against anybody; nor, so far as have been able to learn, have they made any inquisition into the matter. But certain calumnious reports have been circulated, and were published in the public prints, connecting my name with the frauds aforesaid and falsely imputing to me participation in them.

Now, therefore, I do hereby invoke you as the prosecuting officer of the Hustings Court of Richmond city to direct the attention of the grand jury of the said court to this subject, and if there be any evidence implicating me in the said frauds, let me be indicted and tried. I'll promise you that, if indicted, I'll not plead *non compos mentis*, nor make any other special plea, but meet the charge in open court upon the square issue of the facts. I'll ask no favor but a fair trial, and seek no end but the vindication of the TRUTH.

And here I might conclude this communication and await your action, but the subject is of such a character that I must needs address you in a public manner, and the occasion warrants, whilst the opportunity invites, a reference to a former occasion, when you were the prosecutor and I the accused. But in what I shall say touching the same and all connected with it, it is my patient purpose, to speak "with malice towards none—with charity for all;" though, as will be seen in the sequel, I've had wrongs which might excuse some bitterness.

Many of the facts which I shall relate are within your own personal knowledge; others are sustained by the connection in which I shall present them, and all the rest are susceptible of proof. I will tell only "a plain, unvarnished tale," though it may sound like an ancient romance, and would seem so even to myself, indeed, were not the pain and anguish so wretchedly real, which I and those most dear to me have suffered through it. Whether the general public will feel enough interest in my story to read it, is a question which confronts me at the outset, for I know that public apathy to private griefs is discouragingly proverbial. In the rapid whirl of the world's pursuits the fate of a fellow-creature is soon forgotten; and if peculiar circumstances, as in my own unhappy case, do attract a transient attention, yet the subject soon becomes—to use the simile which La Pucelle applies to glory—

"—Like a circle in the water
Which never ceaseth to enlarge itself,
'Till by broad spreading it disperse to nought."

And yet I would fain hope that the public indifference to my personal fate is not as strong as that impulse of public sentiment which, for the protection of society itself, shields its individual members against wrong, and is often the last refuge of the oppressed. At the beginning of the prosecution against me, from which I have suffered so much wrong, I was locked up in jail and made to hold my peace. For nearly four long and weary years since I have been made to suffer the hardships and humiliations of a convict's life for a crime which I never committed; and during all the dreary days and nights of these wretched years SILENCE was compulsorily exacted of me; my custodians being specially charged not to permit anything I might write or say "to get into the papers." Although while silence was thus exacted of me, the governor of the commonwealth repeatedly gave to the public, through the press, a one-sided version of my case unquestionably calculated to affect public sentiment to my disadvantage. And now that at last I am at liberty, and able, to raise my voice, may I not hope to be heard?

Even the noble democracy of Athens when excited, as it often and easily was, was violent and unjust; but my observation of the People of Virginia is that although they too are excitable, and when excited are violent and unjust, yet when they have taken time to reflect, their impulses are sometimes generous and generally just. Upon these noble traits, as well as upon the force of truth and innocence, I shall rely for proper interest in their bosoms and for my vindication in their judgment.

You are familiar, Mr. Wise, with the circumstances of the case, and I need not re-state for you the charge on which I was tried. But for those who have never known, or have forgotten, the particulars I will briefly formulate the facts by stat-

ing that the only charge upon which I have ever been arraigned was the alleged erasure of a single figure in a certain entry in the warrant book of the sinking fund. The following is a copy of the indictment on which I was tried. I insert it here for present information and for future reference hereinafter.

Virginia.—In the Hustings Court of the city of Richmond: City of Richmond, to wit:—
The grand jurors of the Commonwealth, for the body of the city of Richmond, on their oaths present that William D. Coleman, on the 31st day of December, in the year one thousand eight hundred and seventy-three, was secretary of the commissioners of the sinking fund, the said sinking fund having been authorized and created by an act of the General Assembly of Virginia, approved on the 31st day of March, in the year one thousand eight hundred and seventy-one, and that the said William D. Coleman, on the the said 31st day of December, in the year one thousand eight hundred and seventy-three, at the said city, and within the jurisdiction of the said Hustings Court of the city of Richmond, having acquired possession, in some manner and by some means to the grand jurors unknown, of a certain record, the same then and there being and remaining as a public record of the commonwealth of Virginia, in the office of the second auditor thereof, in the capitol of said commonwealth at said city to wit: the warrant book of the said sinking fund, then containing an entry in writing in the words, figures, cyphers and letters following, that is to say: "1873, Nov. 11, by warrant No. 7, to Planters' Nat'l Bank, for purchase of \$18,100 of Virginia consolidated bonds—\$8,190.25," feloniously did forge the said public record by then and there feloniously, falsely, and corruptly erasing the figure 1 from the figures and cyphers 18,100, before written in the said public record, which figures and cyphers, with the sign \$, next preceding them, did, before such forgery and erasure, import and signify eighteen thousand and one hundred dollars; but by reason and means of such forgery and erasure did become, import and signify eight thousand one hundred dollars, which said false, forged, and altered entry in writing in the public record aforesaid is in the words, figures, cyphers, and letters following, that is to say: "1873, Nov. 11, by warrant No. 7, to Planters' Nat'l Bank, for purchase of \$8,100 of Virginia consolidated bonds, \$8,190.25," with intent to defraud, against the peace and dignity of the commonwealth of Virginia."

At my trial upon this indictment, as the judge (Guigon) before whom I was tried, himself, afterwards admitted in a published letter to the governor, I would not have been convicted "in the absence of Mayo's testimony." But Mayo's "testimony" was that I had "confessed" the fact to him, and Mayo was not prosecuted for the larceny of public funds, for which he was indicted, because he was adjudged insane. Now, I shall show herein, besides other things, that whether Mayo was insane or not, *his "testimony" was atrociously untrue.*

For a full understanding of the whole case, it is necessary to consider the antecedent circumstances of my connection with the sinking fund of the commonwealth, and the transactions thereof prior to the date of the prosecution against me. They are as follows:

Early in July, 1871, I received notification that I had been elected secretary of the Board of Public Works. Previously I had been executive clerk by appointment of Hon. Gilbert C. Walker, then governor of Virginia. In the notification of my election as secretary of the Board of Public Works, I was informed of the condition, namely, that in addition to the duties of that position, I should, without additional compensation, also render service as a clerk in the work of funding the public debt (under the provisions of the then recently enacted "funding bill") in the office of the second auditor, or of the treasurer, whichever might, from time to time, require my services. I had not sought this position, but accepted it, and subsequently learned that it was tendered me at the instance of Gov. Walker, with a view to economy in the administration of the state government. My predecessor in office as secretary of the Board of Public Works, had at the same time been holding office as a clerk in the second auditor's office, drawing pay for each position, in the aggregate amounting to more than the salary of either the treasurer or the second auditor. And as, under the provisions of the "funding bill," additional clerks were to be appointed in both the second auditor's office and the treasurer's, it was considered expedient to relieve Mr. DeWitt (my predecessor,

now dead,) from duty as secretary of the Board of Public Works, so that he could devote his whole time to his duties as a clerk on the second auditor's office. For thereby the State would save the pay of one "additional clerk" in the funding of the public debt; and by requiring me to serve as a clerk in the said work without additional pay to the salary of secretary of the Board of Public Works the saving by the new arrangement would be equal to the pay of *two* "additional clerks." The second auditor employed four "additional clerks" in his office, but the treasurer (Hon. Geo. Rye was then treasurer,) employed none; and by his request I performed duty as a clerk in the treasury office in the work of funding the public debt, until a few weeks before he was superseded in office by the election of Col. Jos. Mayo, jr., as treasurer.

The following is a copy of the notification I received at the time of my appointment :

"COMMONWEALTH OF VIRGINIA,
TREASURER'S OFFICE,
RICHMOND, July, 3rd, 1871.

W. D. COLEMAN, Esq.

Sir :—At a meeting of the Board of Public Works of Virginia, held this day, you are appointed secretary of the said board, to date from 1st day of July inst. *with the understanding* that when you are not engaged in the duties of your office you are to render service in the treasurer's or second auditor's office in the funding of the public debt, in whichever office you may be most needed.

JNO. S. RADY,
Secretary *pro tem*.

The following is a copy of a paper bearing on the subject also :

"COMMONWEALTH OF VIRGINIA,
EXECUTIVE CHAMBERS,
RICHMOND, July 2nd, 1871.

HON. GEO. RYE.

Dear Sir :—I was too busy on Saturday to see Mr. Taylor. I wish you would see him this a. m., and if agreeable to him and yourself, appoint Mr. Coleman secretary of the Board of Public Works, to take effect the 1st instant—with the distinct understanding that when not engaged in the duties of his office, the secretary is to render service in the treasurer's or second auditor's office in the funding of the public debt, in whichever office he may be most needed. This will save the employment of at least one extra clerk in this business. The expenses of this funding business will be heavy at best, and I deem it our duty to save wherever we can, and no one man should fill two places. In haste.

Yours Respectfully,
G. C. WALKER."

This paper was endorsed as follows :

"I concur,

GEO. RYE, Treasurer."

"In view of the expense of the present arrangement, I will not object to the one suggested by the governor in this note.

WM. F. TAYLOR, Auditor.

As to my performance of the duties of secretary of the Board of Public Works, the records will attest my faithfulness and efficiency, and there has never been anything alleged against me. And as to my clerical labor in the treasurer's office in the funding of the public debt, it has all been found absolutely correct in every particular.

In the latter part of July 1871, Hon. Geo. Rye, then treasurer, informed me that the commissioners of the sinking fund, under the provisions of the "funding bill" were going to organize pretty soon and that Mr. De Witt was seeking the office of secretary to them, proposing to serve for a salary of \$300 a year in addition to his pay as a clerk in the second auditor's office. Judge Rye said he thought that both Mr. Taylor and Gen. Rogers (who together with himself comprised the commissioners of the sinking fund) were going to vote for Mr. De Witt at the salary named; but that he did not think the state ought to pay such a salary for

little work as would be required of a secretary for the sinking fund commissioners for some years to come at least. At his further suggestion I wrote a note proposing to serve as secretary to the commissioners of the sinking fund without any compensation further than I was then receiving as secretary of the Board of Public Works. He took charge of this note and I heard nothing more about the matter until the 2nd of August, when I was sent for by Hon. Wm. F. Taylor, auditor of public accounts. On entering his office I found assembled there, with him, Gen. Asa Rogers, second auditor, and Hon. Geo. Rye, treasurer. They informed me that they had just organized as commissioners of the sinking fund; and chosen Mr. Taylor as chairman, and had elected me as secretary on the terms proposed in my note which Mr. Taylor then held in his hand. After my appearance they remained together but a few minutes longer and transacted no business whatever, except, in an informal and conversational manner, to the effect of an agreement that there was no particular business then to transact, the meeting having been held for organization only. I made a memorandum in pencil of all they had done prior to my appearance, as thereof informed by them, intending to record the same in a journal of their proceedings as soon as a book for that purpose should be obtained.

The commissioners never held any meeting after that until called together by the governor on the 5th of February 1874, as hereinafter related. The manner in which the business of the sinking fund was conducted has been stated in evidence before a joint committee of the legislature, and printed in their report. [House Doc. No. 6, Session of 1874, pp. 19, *et seq.*] Whenever purchases of bonds were made it was my custom to draw an order upon the second auditor authorizing him to issue his warrant upon the treasury for the payment of the amount of the purchase money. The text of each of these orders, respectively, was a concise statement of the particulars of the purchase to which it had reference. It authorized and requested the second auditor to "issue his warrant upon the treasury, payable out of the sinking fund, for the sum of \$—— in favor of J. B. [the seller], on account of the purchase of \$—— [the face value of the bonds purchased] of Virginia consolidated bonds." This order was delivered to the seller of the bonds on his delivering the bonds purchased. The seller of the bonds then took this order to the second auditor who thereupon issued his warrant upon the treasury for the payment of the money. Upon receiving the second auditor's warrant for the money, the seller of the bonds had to execute his receipt for the same, which receipt was written at the bottom of the order he had brought to the second auditor, or upon the reverse side of it, and thus became a vital part of the same, as a voucher for the second auditor of the said transaction. I am thus particular in stating these details because they prove that I had put it out of my power to commit any fraud upon the sinking fund, (even if disposed to do so) without the actual connivance and assistance of the seller of the bonds. Besides, before delivering one of these orders to the seller of the bonds, it was my custom to show it (the full text of the order) to at least two of the commissioners of the sinking fund, and every one of them had to pass through the hands of the second auditor who was himself one of the said commissioners.

The bonds on being purchased were deposited in the large safe in the treasury office, but before being so deposited were counted in the treasurer's presence and placed in the safe by his own hands, or by his direction under his own eyes. In this safe I had no more access than anybody else about the capitol. I had no key and could not get into it except when opened for me by the treasurer.

At the close of each fiscal year, a report of the operations of the sinking fund was submitted to the legislature. These reports were all prepared by me, without assistance from any one, though always examined and approved by the

commissioners before transmission to the legislature. The said reports are now on file at the capitol; they have been carefully scrutinized and found absolutely correct in every particular.

From the evidence adduced before a joint committee of the legislature and printed in their report, to which I have above referred [House Doc. No. 6, Session of 1874], it is shown that the commissioners of the sinking fund paid but little attention to their duties, and that the transactions of business entrusted to them by law were conducted in a very loose and slipshod manner. But surely it ought not to be contended that I was to blame for *their negligence*—though I have been made to suffer for it.

It was my purpose to make a record of these informal transactions of the commissioners as soon as a book for that purpose was procured; but the commissioners never made any order authorizing me to procure such a book, and I do not think I am to blame for it any more than they were.

At this point it may be allowable to suggest that some apology for the negligent manner in which the commissioners of the sinking fund treated their duties may be found in the fact that at the passage of the "funding bill," it was not expected that the business of the sinking fund would amount to much at any period prior to the year 1880, at which date the "funding bill" provides that there shall be levied a tax equal to one per cent upon the amount of the public debt, which tax shall be appropriated to the purposes of the sinking fund. It was generally expected that the active operations of the sinking fund would commence with the receipt of the revenue from this tax, and in that expectation but little attention was paid by anybody to the subject of the sinking fund. But the "funding bill" also provided that whatever amount might be collected on account of the state's claims against Selden, Withers & Co., and from other such sources should go into the sinking fund. By pushing these claims to unexpected collections, considerable amounts of money were realized, and this money it was with which bonds were purchased for the sinking fund. I do not mean to claim any extraordinary credit to myself for the faithful performance of a simple duty, but it is well known that the collection of many of these claims was largely, if not entirely, due to my energy in pushing them.

I have referred to the evidence before the joint committee of the legislature [as printed in House Doc. No. 6, Session of 1874.] as to the method in which purchases of bonds were made for the sinking fund. As I remember, the first purchase was made by Hon. Geo. Rye, then treasurer. This was, I think, on the very day the commissioners organized, to wit, August 2nd, 1871, and the purchase was made from Messrs. R. H. Maury & Co. My only connection with this transaction was, by direction of treasurer Rye, to make out the order authorizing and requesting the second auditor to issue his warrant upon the treasury for the payment of the purchase money. Treasurer Rye received the bonds from Messrs. R. H. Maury & Co., and I had no agency in the transaction.

There were several other purchases made (by treasurer Rye, I think), prior to the first of January, 1872, but the first purchase made by me, was about the middle of that January. I made this purchase from Messrs. Parker Campbell & Co., at a lower price, by over ten cents in the dollar of the face value of the bonds than any previously purchased, and considerably lower than any purchased during the succeeding three or four months. This, and all other purchases ever made by me, were made upon the condition that the same should be approved by the commissioners. In this instance, especially, I remember that not only was the sanction of the commissioners readily obtained, but I was congratulated upon the excellence of the bargain.

About this time Col. Jos. Mayo, jr., was elected treasurer of the common

health and became, *ex-officio*, one of the commissioners of the sinking fund in place of Hon. Geo. Rye. But the commissioners never held any meeting while treasurer Mayo was in office, until called together by governor Kemper on the 14th of February, 1874. Purchases of bonds, however, continued to be made formally as before, some of them by me, but greatly the larger amount by treasurer Mayo, he being himself in several instances the seller of the bonds as well as the purchaser.

Near the close of the fiscal year ending September 30th 1872, I prepared the Report of the operations of the commissioners of the sinking fund from the date of their organization, August 2nd, 1871, to the close of the fiscal year ending September 30th, 1872." Copies of this report, as printed and laid before the legislature, are of easy access and I beg that it be referred to. The following points are notable, to wit: First, That this report is accurate in every respect. Second, That it shows on its face that the second auditor had nothing whatever to do with preparation.

The real fact is that I alone prepared this report, and it was never even seen by any one else until complete; then it was by me exhibited to each of the commissioners of the sinking fund, and upon examination, approved by each of them, then printed under my sole supervision and laid before the legislature with no name but mine affixed to it. If it had been incorrect in any particular nothing is more than that I would have been held to blame for it. As it is correct, absolutely accurate, in every particular I think I might be allowed whatever credit the fact serves.

In the sequel it will be seen that it is important to observe the manner in which this report was prepared; especially to note the sources from which I obtained the *data* for the statements of amounts, which it contains. And as I alone prepared the report it is undeniable that I alone can give the information. It is as follows:

As I have hereinbefore stated, whenever I drew an order, on behalf of the commissioners of the sinking fund, authorizing and requesting the second auditor to issue his warrant upon the treasurer for the payment of money on account of purchase of bonds, I had so framed the phraseology of the order that its text would be a full statement of the whole transaction to which it had reference. It would show, namely, 1st. The name of the seller of the bonds. 2nd. The amount authorized to be paid out of the money in the treasury belonging to the sinking fund. 3rd. The amount (the face value) of the bonds purchased, and 4th, The date of the transaction. And now in preparing this report, I availed myself of these *orders* to obtain the information I wanted. Had I kept a record of the orders, these orders would, of course, have been copied into said record, and upon being signed by the commissioners the said record would have been an authentic *public record* of their proceedings. But having neglected to do so, I now repaired my negligence by consulting the *original orders* themselves, which were filed in the second auditor's offices as his *vouchers*, and from them I computed the amount (the face value) of the bonds purchased during the period embraced in the report I was preparing; and from them also I computed the amount of money authorized to be paid for said bonds. After making this computation *from the original orders themselves*, I then examined, as a matter of convenience and not for authenticity, the entries in a memorandum book, (or rather kept in the second auditor's office and called the "warrant book of the sinking fund." In more than one instance I discovered errors in these entries which I pointed out to Mr. Morrison, the clerk who kept this "warrant book," and he corrected them at my suggestion. If permitted I can *now* point out these errors which were then corrected,

As to the amount of money *received* into the treasury to the credit of the sinking fund, that also I computed from the original vouchers themselves. Whenever there was any money to be paid into the treasury, to the credit of the sinking fund, it was my practice to draw an order authorizing and requesting the second auditor to issue his warrant upon the treasurer *to receive* said money, and the orders were all filed in the second auditor's office as his vouchers; and *from thence* I computed the amount of money received into the sinking fund during the period embraced in the report. But there has never been any question as to the amount of money *received* into the sinking fund, and so I might as well dismiss this branch of the subject here.

After thus computing, *from the original orders*, the amount of bonds purchased (the face value) and the amount of money authorized to be paid for said bonds, and the amount of money authorized to be received into the treasury to the credit of the sinking fund, I also examined the books in the treasury office to see if, according to them, the amounts of money received and disbursed, respectively, corresponded with said amounts as I had computed them from the original orders. I found that they did.

Having thus obtained and verified an accurate statement of the amount (the face value) of the bonds purchased, I added thereto the sum of \$10,000, that being the amount (the face value) of certain consolidated bonds purchased by the Board of Public Works and transferred to the sinking fund, and thus ascertained the true amount (the face value) of consolidated bonds which ought to be on hand in the sinking fund at the period designated in the report I was preparing. I then went to the treasurer's safe in his office and in the presence of treasurer May took out and counted the bonds therein deposited belonging to the sinking fund to see if the amount of said bonds (the face value) corresponded with that which I had ascertained was the amount which ought to be on hand in the sinking fund. I found that it did. And thereupon I prepared the report mentioned and proceeded to have it printed. There was also on hand at that time a large amount of old *unfunded* (not consolidated) bonds which had come into the sinking fund otherwise than by purchase, the amount of which is stated in a note appended to the said report, as will be seen by reference to it.

It was my custom whenever the purchases of bonds amounted to as much as \$10,000 (face value) to have them converted into registered bonds of the denomination of \$10,000, (that being the highest denomination of bonds issued) in the name of the commissioners of the sinking fund, and thereafter they stood in the name on the books, both of the second auditor and the treasurer. At the close of the fiscal year ending September 30th, 1872, there were *ten* of these registered bonds for \$10,000, each, seven of which were dated July 1st, 1871, and the other three July 1st, 1872. Of the *seven* which were dated July 1st 1871, I shall presently hereinafter speak fully. They form an exceedingly important branch of the subject.

An act of assembly was passed March 7th, 1872, prescribing what should be receivable in payment of taxes, which, in effect, prohibited the tax collectors from receiving the coupons from bonds issued under the "funding bill" although the "funding bill" provided that they should receive them. This act was adjudged unconstitutional by the Supreme Court of Appeals in the case of Antoni vs. Wright. Upon the passage of this act, however, the second auditor refused to continue the business of funding the public debt any longer under the "funding bill," at least so far as concerned the issuance of *coupons* bonds with coupons expressing on the reverse side that they were receivable for taxes. The business of funding in consolidated *registered* bonds, however, continued as before, the said *registered* bonds being precisely like those previously issued, printed from the same plate.

n fact, and only differing as to the *date of issue*. But about the first of July 1872, treasurer Mayo caused to be prepared and commenced to issue a new class of consolidated *coupon* bonds to parties bringing in their bonds to be funded. These were exactly like the *coupon* bonds formerly issued except that it was not expressed on the reverse sides of the coupons that they were receivable for taxes. In the slang of the stock market this new class of *coupon* bonds came to be called "peelers," while those formerly issued were called "consols." But there never was any authority of law for issuing these "peelers," unless the act of March 7th, 1872, be supposed such, and if so, it could be only by a remote implication. But the legislature had manifested hostility to the "funding bill" and to issue "peelers" was to please the stronger side.

Up to the close of the fiscal year ending September 30th 1872, there was no appreciable difference in the market quotations for "consols" and "peelers," respectively; never exceeding the fraction of a cent in their face value. The opinion was that as the state was equally bound for both, there could be no intrinsic difference between the two in value. But in all purchases of bonds, for the sinking fund, preference was always given to "peelers" and no purchases of "consols" were ever made after "peelers" were issued, except in the instances hereinafter specified when auditor Rogers was the purchaser in one instance and treasurer Mayo in the others.

At the time when "peelers" were first issued, the sinking fund had on hand a small lot of "consols," which had been purchased before "peelers" were issued, but as they did not amount to as much as \$10,000 (face value) they had not yet been converted into a registered bond, but still remained in the form of consolidated coupon bonds, as when purchased. Some of the city brokers had on hand at that time also certain small lots of what was called "fundable stuff" (being old bonds, etc., which by the terms of the "funding bill," were entitled to be funded). After "peelers" appeared, they got this "fundable stuff," funded into "peelers," and got me to exchange the "consols" on hand in the sinking fund just now mentioned for these "peelers." I got the "consols" out of the treasurer's safe for the purpose of making these exchanges, in the treasurer's presence, telling him of the whole matter; and on making the exchanges, dollar for dollar of their face value, I put the "peelers" back into the safe in place of the "consols." But these exchanges amounted to no more than \$10,000 (face value), and were not regarded as anything but a mere matter of accommodation to the brokers, for whom I did it. The exchanges were made openly in the second auditor's office, without any attempt at concealment from any body; for *at that time* it was never supposed that there was any intrinsic difference between the two classes of bonds, and nobody dreamed for a moment that "peelers" and "consols" would not be equally valuable as an investment to the sinking fund.

The opinion of the Supreme Court of Appeals delivered in the latter part of 1872, in the case of *Antoni vs. Wright*, and in a similar case at the same term, settled the question which had been raised by the act of March 7th, 1872, as to whether coupons from "consols" should be received for taxes. Soon after this opinion was promulgated, the *difference* between "consols" and "peelers" in the stock market quotations increased, and by the 1st of January 1873, it was as high as five cents in the dollar of their face value. But this "difference" was not at all as to their substantial value. It was only such as was made by the arbitrary quotations of the stock-jobbers for *speculative* purposes; the ground of speculation relating to the action to be taken by the legislature on the public debt question.

There were outstanding on the 1st of October 1872, of "consols" over \$5,000,000, besides more than \$5,000,000 of funded *registered* bonds convertible

into "consols" at holder's option (of which *registered* bonds I shall have more to say presently), while of "peelers" there were less than \$800,000. This was about the state of the case when the legislature assembled in December 1872 and there was great uncertainty as to what that body would do. It was some weeks before there was any development of the legislative purpose, but very soon after Christmas the stock market became excited over Virginia bonds and the quotations were very fluctuating, especially as to the *difference* between "consols" and "peelers"—that affording the best field just then for the speculations of the stock-jobbers. This *difference* fluctuated for several weeks, and seemed to be affected by almost every speech in the legislature on the subject of the public debt. In fine, the brokers were simply *gambling* upon the disposition and purposes of the legislature touching the public debt of Virginia.

But no bonds except "peelers" were ever bought *by me* for the sinking fund after "peelers" were first issued; although some of the brokers (I remember one in particular who was very urgent about it) protested against the making of any *difference* in purchases for the sinking fund between "consols" and "peelers." They wanted me to take them all indiscriminately at "consols" prices.

As I stated just now, there were outstanding on the 1st of October 1872,—besides the \$15,000,000 of "consols"—more than \$5,000,000 of funded, *registered* (consolidated) bonds which expressed on their faces that they were convertible into "consols" at the option of the holder. It had been the practice in the second auditor's office to make these conversions at the holder's option according to the provisions of the "funding bill;" but after the legislature assumed a hostile attitude towards the "funding bill" the second auditor refused to make these conversions any longer.

By reason of this arbitrary refusal of the second auditor the stock-jobbers were enabled to arrange still another *speculation*. They made a *difference* in their market quotations between *registered* "consols" and *coupon* "consols;" although these two classes of bonds were issued under the provisions of the same section of the same act of assembly and declared by law to be mutually convertible at a holder's option. In effect, the second auditor put the \$5,000,000 of *registered* "consols" on the same footing with the \$800,000 of "peelers" and thus afforded the brokers an increase of *speculative pabulum* to the extent of \$5,000,000. But towards the close of the year 1872, the second auditor was induced to agree to convert these *registered* "consols" into *coupon* "consols" whenever requested by holders to do so.

This was in the month of December 1872, when he agreed thus to obey the law, though I did not hear of it 'till about two weeks after he had so agreed. I was then informed of it by treasurer Mayo, who told me of it *as a secret*. He mentioned the fact that under the law the transfer books, as they are called, in the second auditor's office, are closed from the 9th to the 31st of December, and from the 9th to the 30th of June, each year, during which periods no transfers or conversions of state bonds are made. And then he told me that as soon as the book was re-opened, on the 1st of January, the second auditor would again, as he had formerly done, convert *registered* "consols" into *coupon* "consols" at holder's option. In the meantime, however, he charged me to keep this information *secret*, but hinted that if I wanted to make a *speculation* in the premises I was at liberty to do so, giving me to understand that he had already done so himself. On obtaining this information from treasurer Mayo, I went to the office of Messrs. Parker Campbell & Co., and after discussing the matter with them in confidence it was agreed between us to make a speculation in the manner indicated to me by treasurer Mayo. We were to buy *registered* "consols," which were then selling at "peeler" prices, hold them until the 1st of January, then get the second auditor

to convert them into *coupon* "consols" and sell them at "consols" prices; whereby we would make a very handsome profit. The agreement between them and myself was that they should furnish the capital, buy the *registered* "consols" and conduct the operation generally; on settlement they should charge interest on the money for the time used, deduct that and all other expenses of the speculation and then divide the net profit equally between us.

As soon as we had made this agreement Mr. S. Sprigg Campbell went out at once with instructions to buy up all the *registered* "consols" in the Richmond market. But he soon returned and reported that there were none in market. They had all been bought up. That night he went to Baltimore with instructions to buy all he could find in that market. He remained in Baltimore several days, and on his return reported that they had all been bought up in that market also. He said, however, that he had met Gen. Bradley T. Johnson, in Baltimore, and from him had obtained a lot of them for account of our speculation amounting to \$25,000 (face value). He subsequently obtained several very small lots also on the same account amounting to about \$5,700 (face value). Messrs. Parker Campbell & Co. carried out the operation in accordance with the agreement between us, and about the middle of January they informed me that they had closed up the business of our speculation, and thereupon they handed me their account current and we had a settlement in full. The account current then rendered me I have preserved and herewith submit a copy of the same, as follows:

PARKER CAMPBELL & Co., in account with W. D. COLEMAN.

1872.				1872.			
Dec. 30, " Va. Consols @ 55 $\frac{1}{8}$	15,000	8231	25	Dec. 20, Expenses S. S. Campbell to Baltimore,		45	00
Jan. 4, " Va. Consols " 55 $\frac{1}{8}$	10,000	5487	50	Dec. 21, Va. Consol Regis. (purchased by S. S. C.) @ 51 c. 25,000		12,750	00
" 8, " Va. Consols " 55 $\frac{1}{8}$	5,000	2743	75	Dec. 29, 8 day's interest @ 10 per cent. on \$12,750 00		28	32
" 9, " Va. Consols " 54 $\frac{1}{2}$	700	381	50	Dec. 20, Va. Consol Reg. 2,900 @ 50 $\frac{1}{8}$		1453	62
" 9, " Va. Fraction " 55	38 68	21	27	Dec. 24, " " " 2,538.68 " 50 $\frac{1}{8}$		1272	51
				1873.			
				Jan. 9, Sundry Charges interest per account Fisher & Son,		43	51
				Less Sundry Credits		16	01
							27 50
				Jan. 9, Telegrams		10	00
				" 9, Expressage		11	65
							21 65
				Dec. 28, Va. Consol Reg. 200 @ 56		112	00
				Jan. 14, Va. Peeler 100 " 55		55	00
				" 14, Interest on \$2,725			12 97
				W. D. Coleman one-half		543	35
				P. Campbell & Co. "		543	35
							1086 70
							\$16,865 27
							\$16,865 27

E. & O. E.

Receipt given for the sum of \$543.35, as per this account.

WM. D. COLEMAN,

January 14th, 1873.

I wish you to notice, Mr. Wise, while this account is before you, that among the bonds *purchased* was one "peeler" of \$100, which however was not among the bonds *sold*. Mr. Campbell told me he had received this "peeler" by mistake, but in our settlement I agreed to take it on my own account, paid for it on the spot and thus made it my individual property. I afterwards used this "peeler"

(along with others which I subsequently acquired) in the manner hereinafter fully stated.

As I have stated hereinbefore, there were on hand in the sinking fund at this time (say, January 1st, 1873) *seven* of the *registered* "consols" each for \$10,000 (face value) amounting to \$70,000 (face value) in the aggregate. They represented the bonds which had been purchased for the sinking fund prior to the issue of "peelers" and also comprised the \$10,000 (face value) of bonds which had been purchased by the Board of Public Works and transferred to the sinking fund.

That the sinking fund had these \$70,000 of *registered* "consols" on hand was known, I believe, to every broker in Richmond. Among others, Mr. S. Sprigg Campbell had knowledge of it; and after closing up the speculation between Messrs. Parker Campbell & Co. and myself, just mentioned, he urged me to go into another speculation with him, making these \$70,000 of *registered* "consols" the basis of the same. The operation was to be as follows: To get these \$70,000 of *registered* "consols" converted into *coupon* "consols;" then exchange these *coupon* "consols" for "peelers;" then to have the "peelers," in their turn, converted into *registered* bonds again in the name of the commissioners of the sinking fund. It is to be remembered in this connection that the only difference between *registered* "consols" and *registered* "peelers" is in their respective *dates*. Both are printed from the same plates, and both express the obligation of the commonwealth for their payment in precisely the same language. During the month of January 1873 after the speculation between Messrs. Parker Campbell & Co. and myself had been closed up, the subject of converting these \$70,000 of *registered* "consols" and so on, was several times discussed between Mr. S. Sprigg Campbell and myself. I was reluctant to do it, but he urged it.

I had told treasurer Mayo about the successful speculation in which I had engaged with Messrs. Parker Campbell & Co., in *registered* "consols," and he had given me to understand that he also had made a considerable sum of money by a similar speculation. Near about the 1st of February, I mentioned to treasurer Mayo the subject of these \$70,000 of *registered* "consols" in the sinking fund, and asked his opinion of the scheme for their conversion into *coupon* "consols," and so on, as already described above. In reply treasurer Mayo at once expressed his approval of the scheme, and said he would like to go into it. After some discussion of the subject with him, my own scruples were removed, and I made up my mind to go into the speculation. The details of the operation were then discussed between treasurer Mayo and myself, and I suggested that as two of the clerks in the second auditor's office, and one of those in the treasury office, would have to perform the clerical work necessary for the several conversions and reconversions of the bonds, it was but fair that they should have a portion of the profits which might be made by the transaction. To this treasurer Mayo assented, and it was agreed that I should speak to the two clerks in the second auditor's office and he to the clerk in his office. I did speak to the two clerks in the second auditor's office and they both agreed to do their part of the work, and seemed glad of the opportunity to make the money. I only told them the main points in the plan, without the details, as discussed by treasurer Mayo and myself; but I told them that their part would be at least \$100, each, and I thought considerably more, at which they seemed well pleased. I remember being told by one of them at the time of a similar enterprise by which Mr. DeWitt and Mr. Daniel had made considerable sums of money for themselves, on account of exchanging one kind of bond for another some years previously for a certain broker.

After this, I went to Mr. S. Sprigg Campbell, and told him that I had consulted treasurer Mayo, and some of the "basement clerks" in regard to the pro-

ect, and as they saw no impropriety in it, I had resolved to go into it. Mr. S. prigg Campbell seemed pleased at my conclusion, and said he would go to work once to buy up "peelers," and get them ready to make the exchanges. He said he had on hand, or could get ready, as much as \$10,000, in a few days.

The next day, I think it was, I took to the transfer clerk in the second auditor's office, one of the \$10,000 *registered* "consols," and requested him to convert it into *ten coupon* "consols" for \$1,000 each. He promised to do it speedily. A day or two afterwards, probably the very next day, I handed him the other *registered* "consols" for \$10,000 each, asking him to convert them also into coupon "consols," and this he also promised to do speedily.

Not long after this, a day or two, perhaps, he informed me that the first registered "consol" for \$10,000 he had converted into *coupon* "consols," and that the latter were ready to be delivered to me. Thereupon I received them and signed the receipt for them. I then folded them and put them up in a package at my desk, after which I took them into the treasury office, showed them to treasurer Mayo, and put them into the treasurer's safe for the time being.

A day or two after this, as I sat at my desk, a clerk in the treasurer's office passed along near me from the treasury office into that of the second auditor, carrying a large bundle of bonds in his hands. As he passed near me he called my attention to the bonds he was carrying and said something to the effect that he had those bonds for me. I inferred that treasurer Mayo had explained to him the whole operation, and that his remark to me was an allusion to it. But it is proper to say that I have never had any conversation with this clerk on the subject. Two or three hours later, the same day, as I was standing at a large table used by the board of public works in a part of the second auditor's office, examining some old records spread out before me, I noticed the second auditor (then Rogers) at his desk engaged in signing a large number of bonds which I supposed were the same which had been brought in that day. As I stood there, I saw Mr. DeWitt come up to auditor Rogers, and stand by him for a few moments looking at him signing the bonds. He then came on to me where I stood and engaged in conversation with me about the conversion of the said bonds. Mr. DeWitt is now dead, and for that reason I refrain from relating the conversation between us.

After auditor Rogers had finished signing these bonds I received them from the transfer clerk and receipted for them. It was by this time nearly three o'clock, and hour for closing up the offices in the capitol. There were *sixty* of these *coupon* "consols" each for \$1,000, making \$60,000 in the aggregate. I took them and rolled them up into a bundle without folding them, and forthwith carried them into the treasurer's private office to put them in his safe; treasurer Mayo was absent, but had just closed and locked his safe preparatory to leaving. I told him what bonds these were and he opened the safe for me to put them in. The bonds belonging to the sinking fund were kept in an upper compartment of this treasury safe, but there was not room in that compartment for the large roll of bonds I now had and I therefore laid them away in the bottom of the safe. Treasurer Mayo assisted me to put them in, he removing some other things in the bottom of the safe in order to make room. He then closed and locked the safe and we left the office together. As we walked along, after leaving the capitol, I told him of the conversation between Mr. De Witt and myself, while auditor Rogers was signing the bonds, and that Mr. De Witt was to have a part of what we made by the operation. Treasurer Mayo made some disparaging remarks about Mr. De Witt and warned me that he was no friend of mine, his animosity towards me being the effect of my having an office he formerly held;

(alluding to my appointment as secretary of the board of public works in place of Mr. De Witt).

The next day (I think it was) Mr. S. Sprigg Campbell notified me that I had procured \$10,000 of "peelers" and was ready to proceed to that extent making the exchanges which we had agreed to make. I went to the treasury safe and in treasurer Mayo's presence, took out the bundle containing the \$10,000 of coupon "consols" into which the first one of the \$10,000 *registered* "consols" had been converted as I have above related. On taking out this bundle I told treasurer Mayo what I was going to do with the bonds and all about Mr. Campbell having notified me of his readiness to exchange "peelers" for them. I then took the bonds to Mr. Campbell and we made the exchange. Mr. Campbell said the "difference" would be \$300 and he was proceeding to divide that amount equally between us; but I told him no, that it had to be divided with treasurer Mayo and some of the "basement clerks" and that his part would be only *one-seventh*. After some contention for *one-half*, Mr. Campbell finally agreed to take the *one-seventh* and the settlement was made accordingly. He paid me \$257.15 in currency, and retained \$42.85 out of the \$300.

After making this exchange and settlement with Mr. Campbell, I took the \$10,000 of "peelers" received from him and put them in the safe in the treasury office in the very spot from which I had taken the \$10,000 of "consols" to make the exchange. The occasion is distinctly impressed upon my memory by reason of the circumstances. On entering the treasurer's private office to put the "peelers" in his safe I found several members of the legislature and several of the "basement clerks" present with treasurer Mayo, the whole party being in the act of taking a drink of whiskey together. I was invited to join them and did so. The safe-door was standing open, treasurer Mayo, I judged, having just taken out of the safe a demijohn of whiskey which in those days was kept there. I casually remarked to him that I had just come in to put away this bundle of bonds and having thus called his attention to what I was doing, I put the "peelers" in the safe as already stated and proceeded to take a drink with the party. It was then three o'clock and we all went out. I left the capitol at once and proceeded directly to my lodgings, because I was feeling quite unwell and suffering with cold.

The money paid me by Mr. Campbell on making this exchange I put in my pocket for the time, and before I had an opportunity to divide it with treasurer Mayo and the others, I was taken ill with inflammatory rheumatism which confined me to my room for about six weeks. Treasurer Mayo came to see me while I was in bed and I told him the particulars of the transaction between Mr. Campbell and myself, informing him of the amount of money I had received from Mr. Campbell and the basis on which I had divided it, and also mentioning that the \$257.15 I had received from Mr. Campbell to be divided with him (treasurer Mayo) and the "basement clerks" was then by me in my room. Treasurer Mayo very kindly suggested that I would need money in my sickness and told me that I would better keep the \$257.15, and said that he would exchange the remaining \$60,000 of "consols" into which the *registered* bonds had been converted and make the divisions with the others out of the "difference" he should obtain in making the said exchanges. To this I very gladly assented.

Mr. Campbell also came to see me, while I was sick in bed, several times. The first time he came after I had made the arrangement with treasurer Mayo just mentioned, I got him to take \$200 of the money to keep for me, and I kept the balance of it for use as I might need it. Before I got well I sent to Mr. Campbell for \$50 of the money as I needed it, and after my recovery he handed me back the balance.

Upon my recovery and return to the capitol, treasurer Mayo told me that he had effected the exchange of a portion of the \$60,000 but not all of it. He did not tell me how much he had exchanged nor what amount of money he had received on account of the same. He did tell me, however, that he had thought of a better plan than mine for effecting these exchanges. He said his plan was to *sell* the "consols" in the stock market and then *buy* "peelers" as he could pick them up in the market, from time to time. By this plan, he said, we would make more than by mine, because we would not have to pay Mr. Campbell, or any other broker, a share of the "difference." He said he had better facilities for effecting this operation than I had and would go on and finish the business of changing the balance of the \$60,000 of "consols" into which the \$70,000 of *registered* bonds had been converted. I very readily agreed to this and thereafter had nothing whatever to do with exchanging the remainder of these "consols." In the course of the next month or so, treasurer Mayo handed me, at different times, several sums of money amounting to about one hundred dollars, or more, which he told me at the time was on account of my part of the *difference* acquired by exchanging these \$60,000 of "consols" for "peelers." He did not expressly tell me on any of these occasions that he had paid similar sums, or any sums, to the "basement clerks" who were entitled to a share of the profits of the operation, but I took it for granted that he had paid them. To Mr. Campbell I mentioned the fact that I had turned over to treasurer Mayo the whole business of finishing these "exchanges" and hinted to him that he had better speak to him on the subject. I do not know certainly whether he ever did speak to him on the subject or not, but I believe he did.

I have stated that I never at any time did buy for the sinking fund a single lot of "consols" after "peelers" were issued. There were never, in fact, any "consols" bought after the date of the first issue of "peelers," except in three instances in one of which, as I will now relate, auditor Rogers was the purchaser; and the other two treasurer Mayo was, as I will also relate, in its proper place, hereinafter.

Some time in April, 1873, Mr. James L. Maury, representing the firm of R. H. Maury & Co., came to me and asked me to purchase of him for the sinking fund a lot of "consols" amounting to \$26,000 (face value). But I altogether declined to make the purchase on the ground that the commissioners of the sinking fund were purchasing none but "peelers," and this for obvious reasons. On my absolutely declining to make the purchase, Mr. Maury left me and went to auditor Rogers who was sitting at his desk, I being seated at mine at the time. He held the conversation with auditor Rogers, which I did not hear well enough to understand, after which auditor Rogers came to me at my desk, and, entering at once into the subject, said to me that he thought the sinking fund ought to buy the bonds which Mr. Maury wanted to sell. He said he thought the state would be making a good bargain to buy her obligations at such a discount and besides, he added, it would be a great accommodation to Mr. Maury. I replied that the (auditor Rogers) was one of the commissioners of the sinking fund, but I was only a secretary and had no voice in determining their action; but never you gentlemen, the commissioners, direct me to do, I am quite willing to do. And then I suggested that he should let me go and consult the other commissioners. To this he assented, and I went at once to treasurer Mayo, in the treasury office, and told him what auditor Rogers wanted me to do. Treasurer Mayo replied that he had no objection to the purchase, as auditor Rogers had decided it to be made. Then I went to auditor Taylor's office to consult him on the subject, but he was not in his office. I returned to Mr. Maury who was waiting in the second auditor's office, and told him that as two of the commissioners

had agreed to make the purchase he could bring the bonds, and I would receive them and give him an order for a warrant to pay for them. Accordingly, the bonds were brought to me, and I gave the order for a warrant to pay for them. On receiving the bonds, I took them to the treasurer's safe and put them in it, in the presence of treasurer Mayo, along with the other bonds there belonging to the sinking fund.

One day in the month of July, 1873, after auditor Rogers had purchased these "consols" from Mr. Maury, treasurer Mayo purchased of Messrs. Isaac Taylor & Williams, some twenty-odd thousands of dollars (face value) of "peelers." Mr. Williams of that firm delivered these bonds in person to treasurer Mayo in the treasurer's office. When he brought them treasurer Mayo came to me at my desk, and told me of the purchase, and instructed me to draw an order for a warrant to pay for them. When he did so, as I sat at my desk, I suggested to him that it would be well to exchange the \$26,000 of "consols" purchased by auditor Rogers of Mr. Maury (as I have just now related) with Mr. Williams for these "peelers" instead of *buying* the said "peelers;" my idea being to take the "difference" also in "peelers" for the benefit of the sinking fund. To this suggestion, treasurer Mayo assented, but said he had already *exchanged* for "peelers" a portion of the \$26,000 of "consols" to which I had reference. We then went from my desk to the treasurer's private office where Mr. Williams was waiting with the "peelers" he had brought. I went to the safe in the treasury office, took out the bundle I had put there, and which when I put it there contained the \$26,000 of "consols" purchased by auditor Rogers of Mr. Maury. On examining this bundle now, I found that it contained only \$8,000 (face value) of "consols," treasurer Mayo having already *exchanged* for "peelers" \$18,000 (face value) of these "consols." I took the \$8,000 of "consols" which remained, and proposed to Mr. Williams to exchange them with him for his "peelers" as far as they would go; treasurer Mayo being present and assenting to the proposition. Mr. Williams accepted the proposition, and the *exchange* was made on the basis of allowing three and a half cents in the dollar of the face value of the bonds as "difference" between the "consols" and the "peelers." Then I made the calculation, deducted from the amount of "peelers" brought by Mr. Williams \$23,200 (face value) the \$8,000 (face value) of "consols" *plus* the amount allowed as "difference" on the said \$8,000, say \$280 in currency; or calculating the "difference" in "peelers" at the price at which Mr. Williams had made the sale to treasurer Mayo originally—which was fifty cents in the dollar of their face value—it made \$560 (face value) in "peelers;" thus making \$8,560 (face value) of "peelers" to be deducted from the \$23,200 (face value) of "peelers" originally sold by Mr. Williams to treasurer Mayo for the sinking fund, and leaving \$14,640 (face value) of "peelers" delivered by Mr. Williams, for which he was entitled to be paid in money at fifty cents in the dollar of their face value. Thereupon I drew an order in favor of Mr. Williams, or in favor of Isaacs, Taylor & Williams, for a warrant for \$7,320 to be issued by the second auditor to pay for these \$14,640 (face value) of "peelers." This order was then taken to the second auditor's office, and a warrant issued accordingly.

The original order drawn by me on that occasion is now on file in the second auditor's office (or ought to be). There will be found appended to it the receipt signed by Mr. Williams, and the text and purport of it will corroborate this statement of this transaction. It has been variously stated by Mr. Williams and treasurer Mayo, both being essentially inaccurate. I *prove* my statement true by reference to the original order and Mr. Williams's receipt.

When I suggested to treasurer Mayo to exchange these "consols" with Mr. Williams for his "peelers," it was my idea to put the "difference" which would

thereby acquired into the sinking fund, and treat it as a sort of *surplus* of bonds on hand beyond what had been acquired by purchase. My purpose was to append a note to the next annual report of the sinking fund, reciting the fact that this exchange of "consols" for "peelers" had been made, and stating the amount thereby added to the sinking fund, just as in the first annual report I had stated in a note that \$10,000 of consolidated bonds had been, that year, purchased by the board of public works, and transferred to the sinking fund. This was the only method that I thought of at the time by which so anomalous a transaction could be embraced in the account of the sinking fund; for in accordance with the system of orders for warrants, warrants for checks, and checks for currency employed in the several departments of the state government, no warrant could be drawn to embrace and explain on its face the nature and particulars of the transaction with Mr. Williams. But on mentioning the subject to treasurer Mayo again, some time subsequent to the transaction, he told me that he considered that *we* were entitled to the "difference" acquired by reason of the exchange of "consols" with Mr. Williams for his "peelers." He said the sinking fund had no right to it, because it would be wrong for the commonwealth to make any such "difference" between her own bonds in swapping one for another. After some further conversation on the subject, I adopted his view of the matter. And as treasurer Mayo had already exchanged the greater part of the \$26,000 of "consols" in question, and taken the "difference" himself, I considered myself entitled to the "difference" received from Mr. Williams, and thereafter treated it accordingly.

A month or so before the close of the fiscal year ending September 30th 1873, as a preliminary to making out the annual report of the sinking fund for that year, I went to the treasury safe, (treasurer Mayo, being present and assisting me) and took out all the *coupon* bonds I found there belonging to the sinking fund, for the purpose of having them converted into *registered* bonds in the name of the commissioners of the sinking fund. On examining the bonds I found that of them were "peelers;" and I also found that some of them had coupons for the preceding January and July both; some for the preceding July only, and some for the preceding January only. Of the latter I found that the coupons for January and July both had been cut off and the coupon for January, but not for July, afterwards been *pinned* on. This I considered indicative of a mere mistake. The former owner had probably cut off at one time the coupons for January and July, being for one year's interest on the bond, probably in one piece, and the bond being afterwards sold between January and July, in pinning on the coupon to the bond, that for January had been pinned on instead of that for July. I mentioned the matter to treasurer Mayo at the time, but as it made no difference whatever in the *amount* of interest collectible on the bond, we both concluded it was not worth notice. Some of these bonds had no coupons for either July or January having been purchased after the 1st, of July.

I proceeded to take off from the bonds all the January and July coupons, and as I did so I put them into a small paper box beside me, placed there for the purpose. I did not count them at that time for the reason that it was tedious work taking them off, and I considered that I could count them some other time as well; my chief purpose then being to arrange the bonds themselves for conversion into registered bonds. When I had completed the work of removing the coupons I put the paper box containing them into the treasury safe, where it remained some time, for six weeks, I think, until I had occasion to take it out as stated in the next report.

Having thus removed and put away all the January and July coupons from the bonds, I next arranged the bonds themselves in their numerical order, for the

convenience of the second auditor's transfer clerk, whom I had to get to convert them into registered bonds. Then I put them all up into packages of \$10,000 each (face value) that being the highest denomination of bonds issued. On counting these packages after thus putting them up, I found that there were just seventeen of them, making the amount of these "peelers" then on hand \$170,000 (face value). To treasurer Mayo, then present, I told the amount and he thereupon informed me that he had taken out a lot of "consols" belonging to the sinking fund to "exchange" them for "peelers" but had not yet completed the said exchange. I do not remember the amount, if he named it. In reply, I told him that I would not make out the report of the sinking fund until after the 1st of October and he would have time enough to complete the exchange before I was ready to count the bonds. But he has never said anything more to me on the subject, but I supposed afterwards that he had completed the exchange and put "peelers" in the place of the "consols" he had taken out, though I do not know that he ever did.

That same day I informed Mr. Poiteaux, the transfer clerk in the second auditor's office, that I had arranged these "peelers" for conversion into registered bonds and requested him to make the conversions as soon as he conveniently could, but he said he was right busy then and asked me to let them stand until he was less busy. I spoke to him about them several times afterwards, but he always put me off to a more convenient season. They remained just as I had put them up, the seventeen packages of \$10,000 each, from that time until the day of the investigation ordered by Gov. Kemper in February 1874, as hereinafter related, and were produced by me in that condition on that occasion.

Not long after this there occurred what is known in the financial world as "The Panic of September." Under the excitement of that revulsion Virginia bonds which had been selling at over fifty cents in the dollar, went down to forty and even less without finding purchasers. A few days before this "Panic" began while there were strong symptoms of its coming prevailing, Mr. James L. Maury came to me and said that he had some \$5,000 (face value) of "peelers" which he desired to sell in order to get currency (which was then already hard to get) and requested me to purchase them for the sinking fund. He asked, I think, 48½ cents in the dollar for them, that being the nominal rate quoted for them in the stock market, though there had been no sales reported for some time, I think. I declined to make the purchase and told Mr. Maury that matters were so unsettled in the stock market that I thought it bad policy to make any purchases of bonds for the sinking fund at that time. I also made a prediction to Mr. Maury at that time (of which he reminded me afterwards and asked me how I knew it?) that in less than thirty days from that date "peelers" would be down to forty-five cents in the dollar and probably less—as did actually happen in less than twenty days. Upon my declining to make the purchase, Mr. Maury went to auditor Rogers, who sat at his desk almost, though not quite, in sight of me. In a few minutes afterwards, auditor Rogers came to me and first enquired how much money the sinking fund had at that time on hand in the treasury. I was sitting at my desk at the time and taking out and consulting a memorandum of the receipts and disbursements of the sinking fund which I had been keeping that year for my convenience, I told him that in point of fact there were only \$30 then in the treasury to the credit of the sinking fund; but, I added, there was a considerable amount due for interest on the bonds held by the sinking fund which was collectible at any time. He then spoke of the "peelers" which Mr. Maury desired to sell, saying that in his opinion the price asked was low enough, and that the sinking fund would be making a very good bargain to buy them, and that it would be a great accommodation to Mr. Maury. He then suggested that I should at once collect

the interest due the sinking fund which I had mentioned, and make the purchase of these "peelers" from Mr. Maury. I told him, as I had on a former occasion of a similar nature, that whatever the commissioners of the sinking fund (of whom he was one) directed me to do, I, as secretary, would certainly do, and that I had personally nothing to say. He then left me, and I went directly to treasurer Mayo, in the treasury private office, and informed him of all that I have just related. Treasurer Mayo said well, if auditor Rogers wanted the purchase to be made of Mr. Maury's "peelers" he had no objection. Accordingly I returned to my desk where I found Mr. Maury awaiting me, and told him that as two of the commissioners of the sinking fund had agreed to make the purchase, it was unnecessary, I supposed, to consult the third (auditor W. F. Taylor), and that therefore I would receive his "peelers" for the sinking fund at the price he asked; only he would have to wait, I told him, an hour or so for me to put the money in the treasury to the credit of the sinking fund to pay for them. He seemed very much pleased, and left me with the understanding that he would send up the "peelers" in an hour or so. He did send them. I received them at the hands of Mr. Richard W. Maury, and issued the order for a warrant for the money, and Mr. Maury got the warrant and check on which he obtained the currency.

In the meantime, after Mr. Maury had left me, I went to the treasury safe, treasurer Mayo being present, and took out the paper box containing the coupons which I had cut off from the "peelers" belonging to the sinking fund some five or six weeks previously, as I have above related. I had to hasten in order to get the transaction with Mr. Maury completed within the hour or two as I had promised; and in consequence of this haste I did not stop in the treasury office then to count these coupons, but took the box containing them just as I found it in the treasury safe, to Mr. DeWitt in the second auditor's office (it was Mr. DeWitt's business to make out the proper papers for the payment of interest on the "coupon debt,") and requested him to make out the papers on which I could get the interest for which these coupons called. I told him that I had not counted them, but as he would have to count them over again, even if I counted them first, I requested him to take the box and count the coupons for me. He took them, box and all and carried them to his own table (in a recess of one of the windows) for the purpose of counting them and making out the papers for the payment of the interest. But in a little while afterwards—it was fifteen or twenty minutes perhaps—he came around to my desk and handed me a portion of the coupons already counted, with a memorandum of their amount, and told me to make out the "coupon list" for those while he counted and made out the "coupon lists" for the remainder. I did so and then returned the "coupon lists" to him with the coupons the summary of which, as I made it, agreed with the amount as counted by him as per his memorandum handed me. These "coupon lists" are now (or ought to be) on file in the second auditor's office, and they will corroborate my statement about them. Some of them are in my handwriting and some Mr. DeWitt's.

In the course of an hour after this Mr. DeWitt brought me the proper certificates on which I obtained warrants, and on the warrants checks for two-thirds of the amount of these coupons, and a "deferred certificate" for the remaining third. The latter is now (or ought to be) in a little tin-box belonging to the sinking fund where I put it then, and the checks I collected, (by transfer of the amount to the credit of the sinking fund,) and put the voucher of the same into the same little tin-box where it now is, or ought to be.

If you, Mr. Wise, will now examine the original warrant issued to Mr. Maury to pay for this lot of bonds, which is now on file in the treasury office, or ought to be, (the amount of the bonds was just \$5,400 (face value), I believe) you will find

it dated the same day as the receipt for the money (\$4,050) paid into the treasury by me on account of the interest on the coupon bonds belonging to the sinking fund—the latter being, as I have stated, paid in at that time especially to meet the former. And thus you will see that my statement about this transaction is true.

The interest on the "registered debt," as it is called, is entered up, or credited to the holders of *registered* bonds every six months. About the last of September, 1873, the close of the fiscal year, I requested the clerk Mr. Morrison (who had charge of the interest books of the "registered debt") to ascertain the amount due the sinking fund on account of interest on its *registered* bonds and give me the necessary certificates for its collection. He did so; I collected the interest and paid it into the treasury (by transfer) to the credit of the sinking fund, and put all the vouchers relating to the transaction into the little tin-box belonging to the sinking fund, where I suppose they now are.

But after Mr. Morrison had given me the certificates for the collection of the interest, I myself computed the amount of interest due the sinking fund on account of its registered bonds, and discovered that Mr. Morrison had made an error against the sinking fund in his calculation. I pointed out this error to him; he acknowledged it and gave me additional certificates to cover the amount of the error. If you will now examine these certificates, which are filed in the second auditor's office (or ought to be) they will corroborate my statement about the transaction.

About the first of October 1873 I obtained leave of absence, and went on visit to Danville. On my return I found most of the officers and clerks about the capitol very much taken up with politics, the gubernatorial election being the absorbing subject. I also entered into the campaign work as ardently as the others, and as a member of the "Kemper Campaign Klub," and otherwise, devoted my time largely to the business of securing the election of Hon. J. L. Kemper for governor. In consequence of this I neglected for several weeks to make out the annual report of the sinking fund for that year. But I considered that there was no occasion for great promptness about it; the legislature was not to meet that year till January; none of the reports of public officers had been made out, or scarcely any of them even had been commenced. One day, however,—I think it was about a week after the election—the second auditor (Gen. Rogers) asked me to let him see my report of the sinking fund for that year, saying that he wished to make a complimentary reference to it in his annual report on the public debt. (He had never made any allusion to the sinking fund in any manner in any former report.) I told him I had not yet made out my report, but would do so at once and give him a copy. He replied that that would not be necessary; that he only wanted to make a passing reference to the sinking fund in his report, to call attention to the fact that it was absorbing the state debt to an encouraging degree, and that if I would give him the principal items of information on the subject that would be sufficient for his purpose. Thereupon I prepared a rough statement showing the amounts, respectively, of the receipts, the disbursement and the bonds (the face value) purchased during the fiscal year ending September 30th, 1873, which I handed him.

From this very same statement (the identical copy I handed auditor Rogers) I afterwards made out the "report of the operations of the commissioners of the sinking fund during the fiscal year ending September 30th 1873." Copies of the report, as printed and laid before the legislature, are of easy access to you and beg that you will examine it. You will find it entirely accurate in every respect.

In another connection hereinafter you will perceive the importance of the enquiry: How was this statement prepared? And here is the answer: From the original *orders*, for warrants issued and signed by me and filed in the second

auditor's office. I did indeed, for convenience, consult the memorandum which had kept in my desk of the disbursements and receipts of the sinking fund, but verified it by comparison with these original *orders*.

After keeping this statement several days, auditor Rogers returned it to me, saying that that was not exactly what he wanted; that he wanted to know how many of the bonds purchased for the sinking fund were "consols" and how many were "peelers." I replied that in keeping the accounts of the sinking fund no distinction had been made between these two series of bonds, but all were entered alike as "consolidated bonds." I could however by examining the orders make out a statement to show which of the various purchases were "consols" and which were "peelers." Any one can see that this was easily done; for after the appearance of "peelers" no "consols" at all had been purchased, except the \$6,000 of them purchased by auditor Rogers of Mr. Maury, while before "peelers" appeared all purchases were of "consols." I had therefore but to make the calculation with reference to this fact, and the result would give the desired information. He requested me to do so and I did. On handing him the statement thus calculated, he said it was satisfactory, and never mentioned the subject to me afterwards.

I pass on now to another episode in the history of my connection with the sinking fund as its secretary. Under the provisions of an act of assembly, passed 1853, the Richmond and Danville railroad company obtained a loan of \$600,000, upon certain terms which required the said company to pay into the treasury the sum of \$21,000 every six months until the said loan, principal and interest, could be liquidated. In the fall of the year 1872 I called the attention of auditor Taylor to the fact that these semi-annual payments were being made through his office and erroneously passed to the credit of the "internal improvement fund," whereas they should, under the provisions of the "funding bill," have gone to the credit of the sinking fund. Up to that time the company had, I believe, made free of these semi-annual payments subsequent to the passage of the "funding bill," making the sum of \$63,000 which had been erroneously withheld from the sinking fund. Auditor Taylor admitted the correctness of my view of the matter and expressed his willingness to have the correction made. I also called the attention of auditor Rogers and treasurer Mayo to the subject; but up to the close of the fiscal year ending September 30th, 1873, nothing had been done in the premises, and the money still stood on the treasurer's books to the credit of the "internal improvement fund," instead of the sinking fund. I considered that I had done all that was proper for me to do, in that I had given all three of the commissioners of the sinking fund the necessary information on which they could if they chose to do so, and for my part I concluded to do nothing further in the matter; and thus it rested for about a year.

But some weeks after my return from my visit to Danville in October, 1873, treasurer Mayo told me that he had arranged with auditor Taylor, to have this money (\$63,000 in currency) transferred to the sinking fund; and, on the strength of that, had given an order to the Planters' National Bank to purchase a large amount of bonds for the sinking fund at the then prevailing "panic prices." Within a few weeks thereafter, the Planters' National Bank did make purchases for the sinking fund amounting to over \$110,000, at the then prevailing "panic prices." Part of these bonds were "consols" and part "peelers." Treasurer Mayo received them at the hands of Mr. Quarles, the bank cashier, and I had nothing to do in the transaction, except that by direction of treasurer Mayo, I drew an order on the bank for warrants to pay for them.

Near about this same time (during the prevalence of the "Panic"), treasurer Mayo also purchased a small lot of "consols" (about \$2,000, face value, I believe)

of Messrs. Davenport & Co., through Mr. Charles E. Wortham of that firm. And these also were purchased at "panic prices."

These transactions, to wit: The purchase by the Planters' National Bank, at this small purchase from Messrs. Davenport & Co. (both made by treasurer Mayo), and the purchase of \$26,000, face value, made by auditor Rogers, of Messrs. R. H. Maury & Co., comprised all the "consols" that ever were purchased for the sinking fund after "peelers" first appeared in the stock markets.

I have related all I know touching the disposition made of the \$70,000 "consols" into which the seven \$10,000 registered bonds belonging to the sinking fund were converted. Namely, that I exchanged \$10,000 of them with Campbell for "peelers," dollar for dollar, and put the "peelers" into the treasury safe in place of the "consols." Treasurer Mayo undertook to exchange the remaining \$60,000; his plan being to *sell* the "consols" and *buy* "peelers," in lieu of them, to the same amount as their face value. From the testimony of Jno. Davis, Esq., President of the Planters' National Bank, and of others, before the joint committee of the legislature, it was proven that *he did sell* these "consols," they being identified by the serial numbers which they bore. Whether he ever *purchased* "peelers," in lieu of them, to the same amount as their face value, or any amount, except perhaps some \$28,000 which Mr. Campbell in his testimony before the same committee testified that he purchased for him?—is one of the most important questions connected with the deficit which was discovered on counting the bonds belonging to the sinking fund. But upon this question there has never been any evidence adduced, and I am altogether without information.

I have also related all I know about the disposition made of the \$26,000 "consols" which auditor Rogers purchased for the sinking fund from Messrs. H. Maury & Co. Namely, that I exchanged \$8,000 of them for "peelers" dollar for dollar with Mr. J. C. Williams, of the firm of Isaacs, Taylor & Williams; and that treasurer Mayo *told me at the time* that he had then already exchanged the other portion of them. The "peelers" I received from Mr. Williams I put in the place of the "consols" for which I exchanged them; and at the same time put with them the \$560 of "peelers" which he allowed as "difference" in the exchange, but which afterwards, on conference with treasurer Mayo, I was convinced did not belong to the sinking fund, but to me. Whether treasurer Mayo in exchanging the \$18,000 of these "consols" made the said exchange for "peelers" dollar for dollar, or how he arranged the transactions he has never told me, and I know nothing about it.

It but remains for me to state what I know about the disposition made of the \$2,000 of "consols" purchased by treasurer Mayo for the sinking fund from Messrs. Davenport & Co.; and if those purchased for the sinking fund, on treasurer Mayo's order, by the Planters' National Bank. The aggregate amount of the two purchases was about \$60,000 of "consols." Of these all I ever had anything to do with I exchanged dollar for dollar for "peelers" with Maj. John P. Branch of the firm of Thos. Branch & Co., receiving the "difference" in currency by checks. The testimony of Major Branch before the joint committee of the legislature on this subject is entirely correct; and the amount I exchanged with him was, as he stated, \$34,400 of "consols." These exchanges I made with him on three different occasions: first, an exchange of \$10,000; next, of \$4,400, and lastly of \$20,000. And on every one of these occasions, except the last, I paid treasurer Mayo one-half of the amount of money I had received as "difference," telling him at the time all the particulars of the transaction.

Of the remainder of these "consols," I only know that treasurer Mayo told me he had exchanged them for "peelers." One day about the first of February,

4, or the last week in January, I went into the treasurer's private office and there found treasurer Mayo alone with Mr. W. G. Taylor of the firm of Isaacs, Taylor & Williams. Mr. Taylor was nearly in the act of leaving as I entered the room. As soon as he was gone, treasurer Mayo took out of his pocket a roll of bank notes, and counted them over in my presence; they amounted to \$300, and he then counted out \$150 of the said bank notes, and handed them to me, telling me that it was for my part of the "difference" which he had just received, in account of exchanging \$10,000 of "consols" for "peelers."

In concluding my statement of the whole business of these exchanges of "consols" for "peelers," it is but just to myself to say, that I never dreamed of defrauding the sinking fund out of a solitary cent to which it was entitled. I never made any more secret of the matter, than business men ordinarily make of business transactions, and every one of the gentlemen with whom I made exchanges was fully informed by me that I was acting in connection with treasurer Mayo, and with his approval. My view of these transactions was formed after discussing the subject with other gentlemen, whose opinions I adopted; and I acted so with reference to *precedents* of a similar nature which had come to my knowledge in the capitol; and whatever may be the various views of the subject, in its moral and ethical aspect, I believe that even my enemies must admit, in all candour, that there was, at least, an absence of what the law calls the *animus furandi*. I do not mean now to impugn my own conduct in the premises, by offering the penitential plea "that *I believed I was right*"; of course I believed it and *I believe it now*. But the question is susceptible of a juridical settlement, just like any other controversy relating to property, between men in a civilized community. It can be settled by a civil action at law. The attorney general can bring this action at any time, and I have only to say that whenever a jury, with all the facts before them, shall decide that the "difference" between the "consols" belonging to the sinking fund and the "peelers" for which they were exchanged, as I have herein related, ought to have been paid into the treasury to the credit of the sinking fund, then every cent of that "difference" *received by me*, shall be so paid into the treasury, with interest from the day it went into my pocket. I do not mean to argue the question here, but would only ask: What *amount* of such "difference" could the state sue for? At the time these exchanges were made, the speculative schemes of the brokers had raised the *premium against* the good faith and honest purpose of the commonwealth to three cents in the dollar of the face value of these bonds. They have now raised it to *thirty*. But as soon as ever, the state resumes the payment of interest on her debt it will be reduced to zero. Is it not manifest, therefore, that this arbitrary "difference" between "consols" and "peelers" is a stock-jobber's speculation upon the good faith and honest purpose of the commonwealth towards her creditors? Would it not then, I submit, be against sound public morals for the commonwealth to receive, either directly or indirectly, any pecuniary profit by means of legislation which had engendered at distrust of her own good faith and honest purpose towards her creditors, on which the stock-jobbers were thus speculating? But I do not wish, by an obstinate contention upon this point, to weary the patience of those who are kindly disposed to give me a hearing in this presentation of my case. I will only repeat, that whenever a jury shall decide that this "difference" belongs to the sinking fund, then every cent of it ever received by me shall be duly paid, with interest in full. Let it be remembered, however, in connection, that these exchanges of "consols" for "peelers" formed no part of the offence which has been imputed to me. Nothing has been made known about them, or would be, except by the statement of all the facts which I myself have voluntarily made.

There is another episode in the history of my connection with the sinking fund which it is only just to myself to relate here. During the legislative session of 1872-73, I consulted with the two auditors (Taylor and Rogers) and the treasurer (Mayo) in reference to a large amount of state bonds which had been received on account of the sale of the state's interest in several internal improvement companies. These bonds amounted to several millions of dollars, and were lying about—some in one office and some in another—in a neglected and unsafe condition. I suggested that the legislature be asked to pass an act to have them counted and then cancelled and put away safely, to await a settlement between the state of Virginia and West Virginia touching the public debt. Auditor Rogers and treasurer Mayo both assented, but auditor Taylor at first objected to any cancellation of the bonds. He said there would probably be a deficit in the treasury which would have to be met by a temporary loan, and he wanted these bonds to be put up as "collateral" for the loan. I answered his objection by telling him that if there should be a deficit, which in my opinion was improbable, (it turned out that there was none; the taxes came in in time to meet all the payments, and left a small *surplus* that year, I believe) that the state could borrow what money she might need from the state depositories, for they had had the use of the public monies and ought to accommodate her whenever she asked it; and that if she did borrow money from them she would, of course, have to give her obligation for the amount borrowed which would be amply sufficient without "collateral;" and as to putting up these bonds as "collateral," it would be as if a man were to give his note for borrowed money and then offer his own bond of a previous date as security; which would be absurd. Auditor Taylor then withdrew his objection and I prepared a bill to be offered in the legislature for the purpose indicated. This bill I handed to auditor Taylor to lay before the finance committee of the house of delegates which met in his office. A few days afterwards he brought it back to me and said that a member of the committee had suggested that *all* the bonds belonging to commonwealth, including those purchased for the sinking fund, ought to be disposed of in the manner provided for in "your bill"—meaning that I was the author of the bill. I replied that I thought so too, but that in my opinion the commissioners of the sinking fund were already authorized by law to make such a disposition of the bonds belonging to the sinking fund, and I had supposed that they would do so, if they thought proper. However, I added perhaps it might be well to "make a lumping business of it" in the bill and thus simplify the whole matter. I then went to second auditor Rogers and treasurer Mayo; told them what auditor Taylor had told me, and proposed that I should alter my bill in accordance with the suggestion made. They both agreed, and I then drafted the bill anew accordingly. In its amended form I procured it to be copied by Mr. Henry, (the best pensman about the capitol), and gave it back to auditor Taylor to lay before the committee on finance. That committee in a few days afterwards reported it in the house of delegates for passage. It was printed and placed on the calendar of the house. In a conversation with the distinguished gentleman who was then the chairman of the finance committee (Hon. R. T. Daniel, now dead) I explained the necessity for the passage of the bill and urged him to get the legislature to pass it. It was not, however, passed, but stood on the unfinished calendar at the time of the adjournment of the legislative session.

In the "report of the committee for courts of justice relative to the responsibility of the auditor, second auditor, and late treasurer for default or loss to the sinking fund" [House Doc. No.—session of 1873-74], there is embodied the opinion of the attorney general responsive to enquiries propounded to him by said committee. At that time the same distinguished gentleman, whom I have

med as the chairman of the house finance committee, had been elected attorney general, and it is his opinion to which reference is made. He mentions in the opinion the bill, to which I have referred, providing for the cancellation of all these bonds and characterizes the said bill as—"a measure which would have made this loss impossible." But he adds that "it did not become a law." It was certainly by no fault of mine that the said bill "did not become a law," for I exerted every exertion to secure its passage, and was the author of the bill. If anybody was to blame for its non-passage, it was the distinguished gentleman named, himself, to whom, as the chairman of the finance committee was allotted the honor of pressing all such measures through the legislature. In the "opinion" which I gave to the committee for courts of justice the singular mistake is made of attributing to auditor Taylor the authorship of the bill mentioned, and the fact is referred to as a reason for exculpating auditor Taylor from responsibility for the loss of bonds. But auditor Taylor well knows that the real fact is as I have here stated it; and that the measure was devised and proposed by me and not by him, and that this effort to render the loss of bonds *impossible* was my effort and not his. At the time the report of the committee for courts of justice embodying this "opinion" of the attorney general was published, I was a helpless prisoner, and not permitted to even see the report in which the "opinion" appeared. It is less to say anything in my own behalf in the premises. Under such circumstances I do not think that auditor Taylor ought to have (by his silence, and failure to disavow it), appropriated the exculpation given to him by the attorney general, when he well knew that the credit for this effort to protect the Commonwealth from the loss of bonds belonged to me, and not to him.

I beg to be allowed to submit right here, a few reflections upon the operations of the sinking fund during the period of my tenure of office as secretary, which I may call the arithmetic of the situation.

A joint committee of the legislature investigated the affairs of the sinking fund in the month of February 1874, at the close of my connection with the same as secretary, and from this report, the facts are established as follows:

From the date of the organization of the commissioners of the sinking fund under the provisions of the "funding bill," the date namely August 2nd, 1871 up to the 5th of February 1874, the date namely of my removal from office as secretary, there was paid out of the treasury on account of the sinking fund the sum of \$193,768,56 money; for which consolidated states bonds issued under the provisions of the "funding bill" were purchased to the amount of \$376,710,61 (face value); while the entire expenses of the commissioners of the sinking fund amounted to only four dollars and fifty cents.

Of the state bonds so purchased there were in the hands of the said joint committee of investigation the amount of \$360,770,72 (face value). It therefore appeared that there was a deficit of bonds amounting to \$15,939,89 (face value) not accounted for. As to this deficit I have no knowledge myself, but the conjecture I have formed will no doubt occur to you, Mr. Wise, as to any other intelligent reader of what I have written hereinbefore.

For the purpose of this arithmetical statement of the situation, let us concede that this amount (\$360,770,72, (face value) of bonds is all that the sum expended (\$193,768,56) in money has produced, or will produce for the sinking fund. These are all *consolidated* bonds; that is to say they are each the obligation of the state of Virginia for *two-thirds* of the amount of principal and interest of the bond issued by her heretofore in order to raise money to construct her system of internal improvement, the other *one-third* of said bond having been secured to her by compromise with her creditors through the "funding bill." When issued the state of Virginia received for each of these bonds not less than

one hundred cents in the dollar of their face value, and sometimes a *premium* ten per cent. and over; and the money she so received was gold and silver, or the equivalents.

In fine, the arithmetic of the situation may be stated as follows: During two years and six months of my service as secretary to the sinking fund, the penses amounted only to four dollars and fifty cents, of which not one cent ever paid to me; for \$193,768.56 of money disbursed there had been purchase and were then on hand consolidated bonds to the amount of \$360,770.72, average price paid for said bonds being fifty-three cents and seven mills for each dollar of their face value. So, notwithstanding the loose manner in which affairs of the sinking fund had been managed by the commissioners the result of the operations during my tenure of office as their secretary showed that something like half a million of dollars of the debt of the state had been liquidated at a 1 per centum which the creditors of a private bankrupt would be very loth to receive in discharge of their claims. And let it be remembered too that \$193,768.56 used in buying up these bonds did not come from the pockets of heavily-taxed people but was realized from the unexpected collection of the supposed worthless claims of the commonwealth against insolvent debtors like Seld Withers & Co. As the negligence of the commissioners has been used to injure no one but me, it would seem but only fair now that the credit for this immediate reduction of the debt of the state on terms so favorable to the people ought to be considered in my favor!

I have now brought the narrative of my connection with the sinking fund down to the period which I indicated in the outset as "a former occasion when you were the prosecutor and I the accused." I now propose to speak of that occasion and to lay the real facts before the public in a plain, unvarnished tale, adorned by the art of dialectics. I come now, therefore to open the second chapter of my story and to relate how I was summarily tried, and falsely convicted of a crime which I never committed. My story, as I have said, may sound more like a romance of the middle ages than the wretched reality of the present; more like a Westphalian tale of the Fehmgericht than a trial by jury in Virginia.

Averring that by no act of mine has the commonwealth ever lost a single dollar belonging to her, I will show:

Firstly: That I never committed the crime for which I have been made to suffer. In proof of which I will demonstrate and prove that up to a certain notable hour and minute I never had any motive to do it, and that after that hour and minute I never had either motive or opportunity.

Secondly: That I was summarily arraigned, denied such adequate opportunity to prepare my defence as under the peculiar circumstances was necessary, and forced to trial thus unprepared, whilst ailing in body, enfeebled in mind, and broken in spirit.

Thirdly: That the only question contested at my trial by my counsel was not whether I was guilty of the fact charged in the indictment against me, but whether the fact charged in the said indictment was an offence against the law, or not whether I had made an erasure in the warrant book of the sinking fund with intent to defraud the commonwealth, but whether the said warrant book was a "public record" or not. Although there was evidence which could have been adduced at my trial to prove that I never committed the act charged in the indictment, and it did not make any difference so far as I was, in fact, concerned whether the warrant book in question was a "public record" or not.

Fourthly: That the verdict of the jury against me was based upon the chievious vagaries of a madman, whose insanity has been adjudged by a jury according to law. There has never been any evidence to connect me with

act charged in the indictment on which I was tried except the testimony of this insane witness, and I shall herein prove that his testimony was false.

Fifthly : That even if I had been guilty of the crime charged in the indictment on which I was tried, the punishment which I was made to suffer was enormously in excess of the maximum penalty fixed by law for the said offence.

Sixthly : That the punishment imposed upon me was not only enormously in excess of that to which, if I had been guilty, I would have been liable under the law, but that in a material particular its injustice was aggravated by inflicting it upon me in a manner at variance with even the order of the court itself which rendered the judgment and pronounced the verdict.

To show that all these things are true, I now submit to the fair-minded public all the real facts.

They are as follows: About 3 o'clock P. M. on Thursday, February 14th, Hon. Wm. F. Taylor, auditor of public accounts, came to me, at my desk in the capitol, (in that portion of the second auditor's office used by the board of public works), and informed me that the governor "and the board," (he said), wished to see me in his office. I went immediately and found there assembled Gen. Jas. L. Kemper, then governor, Col. Jos. Mayo, jr., then treasurer, Gen. Isaac Rogers, second auditor, and Hon. Wm. F. Taylor, auditor of public accounts, (the latter entering the room with me). Gov. Kemper informed me that he and the other gentlemen around him had been consulting together about a matter very deeply concerning my character; that it had been proposed to make an examination of the affairs of my office without saying anything to me about it; but, on reflection, it had been considered due to me that I should be told about it; and that they had therefore sent for me for that purpose. He then went on to say that "rumors and reports" had reached his ears to the effect that I was an *habitue* of faro-banks; that I was addicted to drunkenness; that it was said that I had been seen in a gambling-house with a state bond in my possession; that a certain gambler "of the name of Wortham or Worsham, or some such name" had been seen with a check drawn in my favor by Mr. Branch, a banker, and that it was suspected that I had hypothecated state bonds with him to obtain an accommodation," as there was a large number of state bonds in the sinking fund over which I had a partial control. In conclusion, the governor said, with a tremendous air of authority, that he had determined that there should be at once a thorough INVESTIGATION.

In the history of the "Rise and Decline of the Roman Empire" Gibbon states that the reign of one of the most corrupt as well as tyrannical of the Roman rulers was rendered ineffably odious by the employment of *delators*—spies and informers"—who procured favor for themselves in the Cæsar's concension by sycophantic slanders against the subordinate officers of the government. With the disposition of Constantius, the governor, it seems, had bent a voracious ear to the tale-bearer against me, and has since shielded him in his sycophancy, by concealing his name, so that he could not be put upon the witness-stand and cross-examined in my presence.

In reply, I told the governor, in effect, that these "rumors and reports" were not only *false* and altogether unjust; that it was true that I had occasionally visited faro-banks [as other officers and employees about the capitol did] but I had never been an *habitue* of such places; that I did sometimes drink, but had never been disqualified for business by it during office hours; but as to these things, I had some days before come to the resolution never to enter a gambling house again or make another drink of intoxicating liquors while I remained in the public service, and with the understanding that that resolution would be kept, I hoped the board would continue me as their secretary; [I felt that I had been at fault in the matter

of these "gentlemanly dissipations" and I believe I used the word "clemency in asking that the board would condone that fault, on my promise of its no repetition.] As to my having used any bonds improperly, I told the governor was utterly false; and asked that he would send for Mr. Branch and let him tell what were the transactions he had had with me; but that I had no earthly objection to any scrutiny he (the governor) might make and he could go on with his investigation. Without noticing my suggestion about sending for Mr. Branch and taking his testimony Gov. Kemper imperiously ordered me to "bring the books and papers" saying that he meant to have an immediate INVESTIGATION.

I thereupon went to the treasury safe and got out the bonds belonging to the sinking fund, (treasurer Mayo accompanying me and opening the safe for me) and brought them. I also brought a little tin-box belonging to the sinking fund containing all the papers, memoranda and vouchers which I had kept. On producing these the governor enquired for the minute-book of the commissioners of the sinking fund, and, on being informed that none had been kept, he expressed his dissatisfaction with that fact to the three commissioners, Taylor, Rogers and Mayo, and they, or some of them, began to explain. Then at the suggestion of one of them, I went to the second auditor's office, and brought the "warrent book of the sinking fund," which had been kept in that office. I also brought the printed volumes containing all the annual reports of the operations of the sinking fund which had been made up to that date.

These "books and papers" were all then taken in hand by the two auditors Taylor and Rogers, and treasurer Mayo, and they proceeded, under the direction of Gov. Kemper, to make the investigation. By this time I had begun to form an opinion touching the proceedings which the governor had instituted, and the purposes therein, which subsequent events have fully confirmed. It had been told me a few weeks before by a friend that efforts were on foot for my removal from office as secretary of the board of public works in order to put Mr. DeWitt back into the office; and now I came to the belief that these proceedings of Gov. Kemper were instituted with that object in view. Certainly, it cannot be denied that if he wanted any *information* as to the affairs of my office; if, in fact, he only desired to *ascertain facts* with no ulterior design to entangle me in order to find a pretext or occasion for my removal from office—surely ordinary *fairness* would have required that he should first have demanded of me AN EXHIBIT of the affairs of my office, and if I failed to make a clear, proper, and satisfactory EXHIBIT that then would be time enough for him to take the books and papers out of my hands and institute a rigid INVESTIGATION. Suppose the governor should, to-day hear any "rumors and reports" derogatory to the treasurer of the commonwealth and should go to his office, demand his "books and papers" and institute a rigid investigation into the affairs of that office without allowing the treasurer him any opportunity to examine his office beforehand; and suppose the investigation should disclose a deficit in the number of bonds deposited there, the treasurer himself being utterly ignorant of such deficit, would it be fair or just to hold him criminally responsible for that deficit, when in fact he was ignorant of it and perhaps been robbed of the missing bonds? Well, such was, virtually, the course of governor Kemper in my case.

But, as I had no suspicion that there was anything wrong in the affairs of the sinking fund, I did not demur to the investigation, but allowed it to proceed. I fully believed that the result would justify my proud confidence and that I should be fully vindicated, "even my enemies being judges," against the slanderous suspicions which it seemed had been engendered in Gov. Kemper's mind by the "rumors and reports" to which I now believe he had lent a willing ear.

The two auditors, Taylor and Rogers, undertook to ascertain the amount

bonds that ought to be on hand in the sinking fund, while the treasurer, Mayo, was to count the bonds produced, so as to see if the two amounts agreed. For this purpose the two auditors occupied a table in the western end of the auditor's office, and the treasurer spread out the bonds on a sofa behind them. Gov. Kemper sat at a table near the other end of the office and distant from the two auditors probably fifteen feet or more. I stood for the most part near the governor and in his rear. Once I ventured to suggest to the two auditors that their work might be facilitated by consulting the annual reports of the sinking fund, which I had prepared and which showed the amount of bonds purchased and on hand up to the close of the preceding fiscal year. But one of them (auditor Rogers, I believe) replied that they "preferred to go by the warrant-book," and after that I held my peace and went to the other end of the room near the window where I stood looking out of the window; leaving them to conduct the investigation in their own way.

At this point, Mr. Wise, I beg to call your attention to a circumstance of some importance. In certifying the case to the supreme court of appeals, the late judge Guigon laid stress on the assertion, that while the two auditors were examining the "warrant book" in order to ascertain the amount of the bonds that ought to be on hand in the sinking fund, as I have just related, one of them called out the amount "\$8,100" which ought to have been \$18,100 (the entry alleged to be forged), and I did not correct him. You will see from my statement of the circumstances that I could not have known anything about whether he was calling it out incorrectly or not. I was distant some fifteen or twenty feet from the two auditors, they were speaking to each other in the subdued tones, which, when employed as they were, would naturally speak in, and it was *impossible* for me to have heard and understood in order to correct them.

Treasurer Mayo completed his count of the bonds on hand, some time before the two auditors got through the work of computing the amount that ought to be on hand. He made memoranda of the various lots of bonds as he counted them, and the aggregate as he made it, I distinctly remember, (for he showed me the slip of paper containing it,) was not quite \$379,000, though the said amount, subsequently ascertained, is now stated at \$360,772.72—over \$18,000 less than treasurer Mayo made it when he counted them. When he had finished counting the bonds, and ascertained the amount, treasurer Mayo asked whether it would be necessary to examine each bond to see if the coupons on it were all right; and I was answered in the affirmative. And he then proceeded to examine each bond accordingly, the two auditors meanwhile continuing their work as before.

Shortly after this Gov. Kemper got up to leave, saying that he had to go to meet a member, or members, of his family at the railroad depot that evening, but directed that the investigation should be continued to its conclusion without delay; and it was so continued after his departure, by the two auditors and treasurer Mayo. Not long after Gov. Kemper had left, the two auditors completed the work of computing the amount of bonds that ought to be on hand, but if they announced the amount, I did not hear it, or do not remember it. They then went to work to assist treasurer Mayo in examining the bonds, to see if the coupons were all right. After some time had been thus spent, it began to grow late in the evening, and auditor Taylor proposed to adjourn the investigation till the following evening. This was assented to by the other two gentlemen, and thereupon auditor Rogers took charge of the warrant book, and the statement, which he and auditor Taylor had compiled, together with all the other papers and memoranda, while auditor Taylor and treasurer Mayo took the bonds, I assisting them, and all together proceeded to the treasury office and put everything pertaining to the investigation, all together, in the treasury safe. Treasurer Mayo locked

the safe and the door of the treasurer's private office in which the safe was, and we all came out and left the capitol together. Near the Washington monument we separated, and I went to my boarding-house near by.

I had a social engagement for that evening, and after tea, I changed my toilet and went and filled it. My time was thus occupied until about half past ten o'clock P. M., and then I returned to my desk at the capitol, and worked an hour more on a statement I had been requested to prepare for the use of the house committee on roads and internal navigation, showing the amount and character of the state's interest in her various works of internal improvement, at the close of the war, what disposition had been made of the same, etc., etc. I left this statement nearly completed, and it was taken by my successor in office, Mr. DeWitt, and delivered to the committee named, and printed by order of the house of delegates. One of the printed copies can, no doubt, be now obtained if desired. An examination of it will show that it required a great deal of labor and time to prepare it. I had to consult the statute-books in each case to ascertain the date of the act of incorporation, then to consult the account-books of the board of public works, as kept in the second auditor's office, to ascertain the amount of the payments made by the state to the capital stock, and to make many similar references, for the complete information which this tabulated statement contains. I had been working on it every day, and three or four nights, prior to the date of the investigation ordered by Gov. Kemper as above related. I worked at night as well as day upon it, because Mr. Armstrong, of the committee, came to me and requested me to finish it as soon as possible because the committee were needing it in the consideration of certain bills then before it. The watchman, Beach, was in the office near me all the time I was there that night, and no one else was present. All this time I had no apprehension that there was anything wrong about the affairs of the sinking fund and felt no uneasiness on the subject. I did not even mention the matter to any person, except one lady—and to her I only mentioned it as a matter which might afford my enemy an occasion to attempt my removal from office as secretary of the board of public works.

Next morning I was at my desk in the capitol as usual and resumed work upon the statement I was preparing for the house committee on roads and internal navigation, and continued this work till the close of office hours. That afternoon (Friday February 6th) the weather was very inclement, there being a heavy snow storm. The investigation had been adjourned to that time, but Gov. Kemper did not appear. Soon after 3 o'clock, however, the two auditors, Taylor and Rogers, and the treasurer, Mayo, and myself came together in the office of the auditor of public accounts where the investigation had been commenced the previous afternoon. It being evident that the dinner-hour would be passed before the investigation could be concluded, and as we had all gone without our dinners the previous day, treasurer Mayo proposed to defer the work until we could get our dinners. This was agreed to and treasurer Mayo invited me to go with him to Zetelle's to dine, and I accepted the invitation. The other gentlemen did not go with us, but I suppose they got their dinners elsewhere. While treasurer Mayo and I were thus together we conversed most of the time as two friends would under such circumstances, pleasantly and sociably about things of no particular importance; but treasurer Mayo more than once endeavored to turn the conversation upon the subject of the pending investigation. I avoided it, through a sense of delicacy. My idea was that as he was one of the investigators, and I the accused, it was not proper for me to converse with him on the subject while we were alone. I had not mentioned the subject to any one since the investigation was ordered, (except to one lady as I have stated above).

and now whenever treasurer Mayo tried to introduce it I studiously avoided it, as far as I could.

After we got through with dinner, treasurer Mayo and I together returned to the capitol and there found the two auditors, Taylor and Rogers, awaiting us, to resume the investigation. But for greater convenience it was agreed to continue the work in the treasury office instead of the office of the auditor of public accounts where it had been commenced. Gov. Kemper had not yet appeared and did not appear at all that evening. The two auditors, Taylor and Rogers, the treasurer, Mayo, and myself went into the treasury office and they took out from the treasury safe the bonds, the warrant-book and all the papers pertaining to the investigation which they had put in there the preceding evening. Again, as on the previous evening, I was not invited to and did not take any part in the investigation, except that I lighted the gas, when it began to grow dark, and rendered such other like services as politeness prompted.

The computation of the amount of bonds that ought to be on hand had been completed by the two auditors the evening before, as I have stated, though up to that time I had not seen the figures, and did not know the amount. The treasurer, Mayo, had also, as I have stated, completed his counting of the bonds on the evening before, the amount of the same being, according to his count, as I have stated, not quite \$379,000. At the time of adjournment the evening before, the work of examining the bonds to see if the coupons upon them were all right had been commenced, and it now remained, as I supposed, to complete this part of this investigation next. But as each of the bonds had to be examined separately, it was agreed that, as examined, they should be put up in packages and sealed, the amount of bonds in each package being labelled on the cover thereof. In doing this work, auditor Rogers was seated at a small table near the middle of the room (the treasury front, or public, office), auditor Taylor stood at a desk in the north-east corner of the room, and treasurer Mayo sometimes stood at a desk against the fire-place and sometimes at another desk in the north-west corner of the room. Auditor Rogers and treasurer Mayo examined the coupons on the bonds, counted the bonds, and put them together in convenient amounts, and passed them to auditor Taylor, who wrapped them up in packages, sealed them, and wrote the amount on the cover of each. Nothing was requested of me and I took no part in any of their proceedings; except, as I have said I lit the gas for auditor Taylor, and sometimes, held the burner down to his convenience in melting the wax for sealing packages.

During the time that this work was being done, all present engaged in a sort of general conversation on various topics of no particular importance, each one contributing a remark or so from time to time. Feeling entire confidence that everything was all right with the affairs of the sinking fund, and not dreaming that the bonds were deficient to the extent of even a single dollar, I felt no uneasiness as to the result of the investigation, and joined in the conversation with the others from time to time, with cheerful spirits.

The work of putting up the bonds into packages, as I have described, was completed about night fall. Each package being sealed, and the amount labelled on the cover thereof, a list of these amounts was made and added up. This aggregate was then compared with the amount of bonds that ought to be on hand and the same had been computed by the two auditors the preceding evening. It was found that there was, according to their computation, a deficit of bonds to the amount of nearly \$1,400 (face value). When this deficit was announced to me, I was as much astounded, as if I had been struck by a thunder-bolt from a clear sky, and so expressed myself, in those very words, to the gentlemen present. I was inexpressibly troubled about it, for such a result of the investigation,

was as inexplicable to me as it was unexpected. In the torture of my distress, I asked permission to re-open the packages, and recount their contents, hoping to find some mistake in the count of the bonds, which would set matters right on being corrected. The two auditors appeared to sympathize with me very deeply in my distress, though treasurer Mayo seemed stupified, as it were, and said nothing. Auditor Rogers, proposed that further proceedings be postponed until the next day, and then all the packages re-opened, and the bonds recounted. He said to me in a comforting sort of manner (I remember his very words): "Well, Coleman, we will sleep over the matter to-night, and may be, by to-morrow, we will find the missing bonds, put away somewhere, and overlooked, in the safe or somewhere." "In the meantime," said he, "we will keep everything a secret in our own breasts, say nothing to anybody, make no report to the governor yet awhile, and nothing will be said by anybody about it, and we will get the matter all straight." "Ah! General," said I, in reply, "there will be no sleep for me, for I shall pass a wretched night of misery and anxiety."

The packages of bonds were then all gathered up together and carried into the treasury private office and put back into the treasury safe, I assisting in doing it. Whilst I was standing in front of the safe beside treasurer Mayo, who was arranging some of the packages of bonds in the safe, which I had just brought to him, auditor Rogers came up, with the warrant book, into which he had put all the papers and memoranda made during, and pertaining to, the investigation. This book, with the papers and memoranda in it, auditor Rogers put on a shelf in the treasury safe, just as he had done when the investigation was adjourned the evening before. After thus putting the warrant book and the papers in it into the safe, auditor Rogers passed on to the door leading to the second auditor's office, near which auditor Taylor was then standing, and both of these gentlemen lingered there, just outside the door, waiting for treasurer Mayo and myself to join them, treasurer Mayo being detained for several moments in arranging the packages of bonds in the safe, so that the door would close properly. Just as treasurer Mayo had got these packages arranged, and was about to close the door, the thought suddenly crossed my mind, like an electric flash, as it were, that perhaps, the two auditors in computing the amount of bonds that ought to be on hand had made some mistake in their calculations, the correction of which would set matters right. Acting upon this thought, impulsively, I reached forth my hand and took down the warrant book with all the papers in it, which auditor Rogers had just put into the safe, and holding it up to treasurer Mayo, I told him I wanted to go over these calculations for myself that night. He assented, and I took the warrant book with all the papers in it, and put it on top of the treasurer's desk in the same private office of the treasurer, outside of the safe, and left it there for the purpose of going over the calculations for myself that night, as I had told treasurer Mayo I wanted to do. Treasurer Mayo then turned down the gas in this private office of the treasurer, and he and I came out by the door leading to the second auditor's office and joined the two auditors who were waiting for us near that door. Treasurer Mayo locked the door out of which we passed, but left the other door to this private office unlocked and the gas burning in the room, though turned down low, so that I could have access to the room and to the warrant book and papers that night in order to go over the calculation for myself as I had told him I wanted to do. On joining the two auditors, we all came out of the capitol together. It was by this time quite dark; the weather was very bad; nothing further was said in relation to the investigation; near the monument I parted from the other gentlemen, and went directly to my boarding house.

Disturbed in mind beyond expression about the deficit which the investiga-

on had so unexpectedly disclosed, and painfully anxious to discover how it could have occurred, and to set it right, I reached my room in a state of indescribable distress and mental anguish. On reaching my room, I gave myself up to the most intense reflection, mentally overhauling as many of the transactions of the sinking fund as I could, hoping, by possibility to recall some transaction in which some error might have occurred, which would account for the deficit in the bonds. In the midst of these reflections there came back to my memory an occurrence which made my heart bound with delight. This was as follows: A short time prior to my illness in February, 1873, (which I have mentioned herein before,) I had handed to Mr. Poiteaux, the transfer clerk in the second auditor's office, a little over \$1,200 (face value) in fractional certificates of various amounts which had been purchased for the sinking fund at sundry times, together with a memorandum of the several numbers and amounts of the same, requesting him to consolidate them, and issue new bonds in lieu of them. Shortly afterwards Mr. Poiteaux had delivered to me two \$100 "peeler" bonds on account of this lot of fractional certificates, leaving the transaction uncompleted, temporarily, because (I think it was) the supply of \$1,000 "peeler" bonds on hand was exhausted, and he had to wait for a new supply to be printed. After my recovery and return to the capitol, I reminded Mr. Poiteaux of this incomplete transaction, but he declared that he had afterwards made out the \$1,000 "peeler" bond, and delivered it to me, and had my receipt for it. The receipt had doubtless been signed when I received the two \$100 "peeler" bonds, with the understanding that the \$1,000 bond would be handed to me in a day or so. This, indeed, was rather a loose way of doing business, but by no means unusual among the officers and clerks in the capitol. Very soon afterwards, I was taken ill, and when I applied for the \$1,000 "peeler" bond after my recovery, Mr. Poiteaux claimed that he had delivered it to me. In my own mind, I was fully satisfied that he was mistaken, but as he had my receipt, I could do nothing but wait in the hope that circumstances would turn up after a while to convince him of his error, and I had no doubt that he would correct it as soon as convinced of it. So I determined to wait the development of circumstances. This matter had never been forgotten by me, but how was that it did not come back promptly to my memory as the explanation, at least in greater part, of the deficit in the bonds, I cannot understand myself, except by reference to the then condition of my mind—stunned by the shock and bewildered by the situation.

Now, however, this transaction came back to my recollection with the distinctness of sunlight. And now, I thought I could account for the deficit of bonds, at least for nearly all of it, and I believed that the remainder of the deficit, (about \$400,) was due to a miscount of the bonds on hand. Accordingly, I settled in my mind, that I would next morning make a statement of this transaction, and get Mr. Poiteaux to make a thorough search in the second auditor's safe for the \$1,000 "peeler" bond. With this mental relief, I came down stairs from my room in my boarding-house, and went to supper with a mind comparatively at

After supper I returned to my room, and remained probably half an hour or more, smoking and reading; then came down, and returned to the capitol partly for the purpose of resuming my work on the tabulated statement of the state's interest in the various works of internal improvement, which, as heretofore explained, I was preparing for the house committee on roads and internal navigation, and partly for the purpose of examining the computation of the account of bonds which ought to be on hand in the sinking fund, as the same had been made by auditors Taylor and Rogers; to do which, as I have stated, I had, with the permission of treasurer Mayo, that evening taken the warrant book, with the papers and

memoranda in it, out of the treasury safe, and placed the same on top of the treasurer's desk. On entering the basement of the capitol, I found the watchman Beach, on duty as usual, and requested him to light the gas at my desk. He did so, but it burned but dimly, because, as I supposed, of the fact that the hall of the house of delegates was brilliantly lighted, and the quantity of gas up there burning, allowed but little for the burners below. Finding that the light I could then get at my desk was insufficient to work by, I requested the watchman to put it out entirely. I mentioned that, in my opinion, it burned so dimly, because of the bright lights burning above-stairs; and, telling him that I would return, to continue the work I was engaged upon, at a later hour, when the gas up-stairs would be no longer needed, and I could get a better light to work by, I left him.

Leaving the watchman in the second auditor's office, I went up-stairs to the hall of the house of delegates, where I found a committee of the legislature in session. I remained and listened to their proceedings for some time, until I became tired of it, and then walked out and waited in the rotunda for a while, hoping that the committee would soon rise. But they continued in session so long, and seemed likely to continue so much longer, that I got tired of waiting in the rotunda, and concluded, although the weather was bad, to walk up to the Richmond club-house, and spend an hour or so, as I was in the habit of doing nearly every night. I remained at the club-house an hour or so in company with a number of associates, whom I generally met there, and then returned to the capitol. It was now approaching twelve o'clock. I went into the second auditor's office with the watchman, Beach, whom I found on duty as before, and who opened the western door of the basement, on my knocking at it, and let me in. He lit the gas for me, near my desk, which, now that the lights up-stairs had been extinguished, burned brightly enough. There is a chimney-wall between the second auditor's office proper, and that portion of the same apartment used by the board of public works, in which my desk stood. Before going to work, I went around to the other side of this wall where the fire-place is situated, and sat by the fire with the watchman for some minutes, warming myself, because the weather was cold. Then I went back to my desk, and took out the papers on which I was making out the tabulated statement of the state's interest in the various internal improvement companies, and after examining this work a while, found it so nearly finished that I could complete it in a few hours, I thought. There were, however, several items of subscriptions to some of the companies, the amounts of which I had taken from an old report of the board of public works, and these needed to be verified by comparison with the original entries in the account books of the board of public works. These account books were in the second auditor's office, lying under a table where they had been put to get them out of the way of current business. I concluded to verify these items, and then put the work away till next day. I went around to the other side of the chimney-wall, where the watchman, Beach, was, got the account books I needed, brought them to my desk, and verified the items by comparison with the original entries. This took me only fifteen or twenty minutes, and I then carried the account-books back, and put them where I got them from, came back to my desk, and put away the papers on which I was making out the tabulated statement mentioned, intending to finish the work next day.

During all this time my mind was comparatively at ease on the subject of the affairs of the sinking fund, because I believed I had discovered the cause of the small deficit of bonds, which the investigation had disclosed that (Friday evening, and would be able to explain the same next morning. But I still adhered to the purpose of making an examination for myself of the computation made by the two auditors of the amount of bonds that ought to be on hand; to do which,

As I have stated, I had, with treasurer Mayo's permission, taken out of the treasury safe that evening, the warrant book and accompanying papers, and put them on top of the treasurer's desk in his office. Accordingly, after putting away the work I had been doing on the tabulated statement of the state's interest in the various internal improvement companies, I got up from my desk, and went on into the treasury office by way of the door between that office and the treasury office. I am not entirely certain as to the position of the watchman, Beach, at this time, for, not considering it of any importance, I did not notice particularly, as to his whereabouts; but I am entirely certain that he was still in the second auditor's office, and must have been cognizant of my movements.

I went on into the treasury front, or public, office, and from that, into the treasurer's private office, by way of the door connecting the two. This door, as you know, sir, faces due east, the other leading towards the second auditor's office, faces due south. This door had been left unlocked, by treasurer Mayo, for me that evening, and I opened it, and went in. The gas was burning, but turned down low; I raised it, and having thus lighted the room, at once took down from on top of the treasurer's desk the warrant book, together with the statement of bonds that ought to be on hand as computed by auditors Taylor and Rogers, and all the other papers and memoranda made by them during, and pertaining to, the investigation; all of which were lying loose in the covers of the said warrant book. Seating myself at the treasurer's desk, I proceeded to make the examination.

I had no doubt that the entries in the warrant book were all correct up to the close of the fiscal year ending September 30th, 1872, for I had examined them up to that date, when I made out the first report of the operations of the commissioners of the sinking fund; and although there had been a number of erroneous entries, yet erasures had been made where these errors occurred, and corrections inserted; so that the warrant book might be regarded as "correct" up to that date for all practical purposes—at least, correct information could be obtained from it by any one who could understand the entries with their alterations and corrections.

But it was in the statement compiled by the two auditors from this warrant book that I rather *hoped* to find errors, supposing it probable that these gentlemen might have mistaken the amounts of some of the entries when taking them down. Commencing with the first entry in the book, I proceeded with my examination, carefully comparing each entry in the warrant book, with the same as put down, in pencil, on the statement compiled by auditors Taylor and Rogers.

On the opening page of the warrant book there had been an entry (made by Mr. Morrison, the clerk who kept the book) of a transaction made by John C. Lewis, Esq. (now dead), then cashier of the Planters' National Bank, under authority of the board of public works, (before I became secretary of that board). This entry ought not to have been made in the warrant book of the sinking fund at all. It ought to have been made upon the warrant book of the board of public works, which the statute required the second auditor to keep in his office, but which was not so kept. Mr. Morrison had, however, entered it in the warrant book of the sinking fund, but afterwards on comparing the account with that kept in the treasury office, he found that his account was muddled by reason of this entry and would not agree with the treasury account. Then, to force his account to agree with the treasury account, he had run his pen through the entry, intending thereby to cancel it. In making my examination now, I found this entry but imperfectly cancelled and likely to mislead. I therefore took a pen and ruler, and drew some heavy lines through it, sufficiently, as I thought, to cancel it effectually. I then proceeded with my examination, making the same very carefully and

minutely. But up to the 1st of October, 1873, I discovered no error in the warrant book except such as had been "corrected," and none in the statement compiled by the two auditors. Beyond that date I continued my examination with the same carefulness and particularity, and presently I came to the entry in the warrant book, of date November 11th, 1873, which is the entry alleged to be forged in the indictment on which I was tried. This entry as I then read it, the Friday night, or rather Saturday morning, for it was then after 1 o'clock, A. M.—*which was the first time I ever saw it in my life*—read as follows :

" 1873, November 7.—By warrant No. 7. to
 Planters' National Bank
 for purchase of \$8,100
 of Virginia consolidated bonds. } \$8,190.25."

This entry was in the handwriting of Mr. Morrison. As I then read it, I saw instantly that it was manifestly an error. It could not possibly be true that \$8,190.25 had been paid for only \$8,100 (face value) of bonds. My conjecture at the moment was that in entering the warrant on the book, Mr. Morrison had gotten the amount of dollars and the amount of bonds confused in his mind, and had written the amount of bonds \$8,100 instead of \$18,100 as it should have been. Then, impulsively, as it were, I took up a pen and inserted a figure "1" between the "\$" mark and the figure "8" making the entry correct—\$18,100.

On immediately comparing this entry with that corresponding to it in the statement compiled by the two auditors I found the entry there also "8,100," thus showing that neither auditor Taylor nor auditor Rogers had detected the error when they were examining the warrant book and making out from it this statement of the amount of bonds purchased. This statement as I have before remarked had been taken down with a lead pencil. I now took my pencil and with it I *entered upon this statement compiled by the two auditors in the entry "8,100" the figure "1" before the figures "8,100" making it read "18,100" and thus also making it correspond with the corrected entry in the warrant book from which it had been taken down.*

The discovery of this error created great uneasiness in my mind anew, and threw me into the most painful alarm. But I went on with my examination and completed it. I found all the other entries correct in the warrant book and correctly taken down in the statement compiled by the two auditors. I now became painfully excited and thoroughly alarmed. I had gone into the examination hoping to find some error to account for the small deficit which had appeared to exist that Friday evening and behold! the only error I could discover resulted right reversely by increasing this deficit to astounding proportions.

For a few moments I could scarcely confide in my own *actus intellectus* which adduced such a conclusion. Then I went back and made the examination all over again very carefully, still hoping to find some error the correction of which would resolve the difficulty. But no error could I find. But worse, and worse! I now discovered with fresh astonishment, and increased alarm, an important omission which the two auditors had made in computing the amount of bonds that ought to be on hand. At the beginning of the investigation on Thursday afternoon, I had suggested that the amount of bonds that ought to be on hand, up to the close of the fiscal year, ending September 30th, 1873, could not readily be ascertained from the printed reports of the sinking fund. My suggestion had, indeed, been slighted then in such a manner as to repel me; but I had seen at that very time, lying on the table, open, before the two auditors, the two volumes containing the reports I referred to, and I saw them looking over the reports. In the report for the fiscal year, ending September 30th, 1872, it was expressly stated that \$10,000 (face value) of bonds had been purchased by the

board of public works, and transferred to the sinking fund, and this amount ought, therefore, to be included in the computation of the amount of bonds that ought to be on hand.

If you will now take that report, Mr. Wise, and examine it, you will find this item there stated so expressly and prominently, that no man who can read could fail to see and understand it. Having seen the two auditors looking at that report in making the investigation, I had supposed all along that they had included this \$10,000 of bonds, purchased by the board of public works, and transferred to the sinking fund in their computation of the amount of bonds that ought to be on hand. But on examination now, I was astounded to find that they had not. This discovery again added to my painful excitement, and increased my alarm beyond expression. It was now apparent to my mind that there was a deficit of bonds to the amount of over \$20,000! I was completely stunned by the shock of this discovery, and sat there for some time, I know not how long, scarcely able even to think; so inexpressibly painful was my anguish of mind.

My meditations—if, indeed, such bewildered mental efforts as my mind was then alone capable of making may be called meditations—involved me more and more in a maze of the most distressing anxieties. As well as I could reflect at the time, I gave my thoughts to the painful consideration of the complicated circumstances which seemed to be conspiring against me with the grim aspect of untoward fate itself. I can recall the disjointed train of these distracting reflections, even now (for, indeed, I can never forget them). I now reflected that the course Gov. Kemper, from the outset had manifested a hostile *animus* towards me; that the apparent pruriency with which he had listened to whispered “rumors and reports” against me, and the eagerness with which he had hastened to arraign me as obnoxious to his “suspensions”—showed very plainly his purpose to entangle me if possible; whilst the political, and personal, influence he then wielded, rendered him a very formidable adversary. By taking a sort of “snap-judgment” on me he had directed all eyes upon me, as alone, of all persons, to be “suspected,” and alas! I could but remember with the keenest regret that the “gentlemanly dissipations” in which I had foolishly indulged, would be used to the fullest extent, and also exaggerated, to give color to the “suspensions,” which he had thrown around me. The deficiency of bonds which I had discovered, and which had not indeed been discovered, as yet, by any one but myself, and it might be, that it would not be discovered by any one else without my assistance; at least not in any short time. And the question was, what should I do about it? Under other circumstances, there would, of course, have been no difficulty about disclosing the fact. I should at once have disclosed the fact. But now, I reflected, if I did so, it would be necessary also to account for it. It would not do for me merely to disclose the fact, and declare my inability to account for it. The peculiar circumstances in which Gov. Kemper’s “suspensions” had placed me, required that I should show who was responsible for this deficit of the bonds, in order to exculpate myself. I could but consider also that Gov. Kemper’s acrimonious attack upon me, backed, as it would be, by the personal and political influences of his eminence as the governor of the commonwealth, would arouse such a current of public sentiment against me as would be irresistible by any citizen of my humble station. Thus while I would be singled out for attack, as the only person “suspected,” the thousand tongues of public rumor would magnify the governor’s aspersive “suspensions” into a throng of monsters, whose very proportions would make them truly formidable in the attack upon me; each one of which would be capable of piercing my moral sensibilities a thousand times more fully than if it physically drew drops of my heart’s blood. I had not, indeed,

the slightest apprehensions, whatever, as to any criminal proceedings against me, for I knew I had committed no crime, and I did not dream then that in the courts of Virginia I could ever be convicted of a crime which I had never committed. But in the high court of public opinion, and especially among the high-toned associations to which I was accustomed, I knew that the old Scotch verdict of "not proven," would not suffice for my vindication. *There*, I knew, that if I could not prove a negative—that I had not taken these bonds—it would be all over with me.

From such torturing reflections, I could reach no satisfactory conclusion. I therefore determined to wait until my mind became more composed, and I had calmly and fully considered the subject in all its aspects before undertaking to do anything in the premises. Accordingly, I concluded to wait until next morning (or rather, until later that morning, for it was now after two o'clock A. M.), before making up my mind what to do.

With this idea in my mind I reasoned that, whatever I might conclude to do after mature deliberation, it would be best for the present, at least, to leave the warrant book and all the papers and memoranda exactly as I had found them when I came there to make the examination which, alas! had resulted so distressingly to me. Accordingly, thereupon I took my penknife and scratched out the numeral "1" which I had inserted, as I have related, between the "\$" and the numeral "8" in the entry in the warrant book. Then I took an india-rubber erasure, lying there on the treasurer's desk, and rubbed out the numeral "1" which, as I have already related, I had written in pencil-mark before the numeral "8" in the corresponding entry in the statement compiled by auditors Taylor and Rogers on a sheet of foolscap paper. Having done this I put this statement and all the other papers and memoranda back into the warrant book just as I found them, and then replaced the warrant book, with the papers and memoranda in it, on top of the treasurer's desk whence I had taken it when I came into the room to make the examination. Then I got up and turned down the gas in the room (the treasurer's private office) and passed out of that room into the front, or public office of the treasury by the door connecting the two, as I had entered, leaving the door unlocked just as I found it; and then I passed on out of the capitol through that portion of the second auditor's office used by the board of public works. As I passed out I spoke to Mr. Beach, the watchman, who was around on the other side of the room near the fire-place, and bade him good-night and requested him to put out the light which was still burning near my desk. I then went directly to my own room at my boarding-house, about a square from the capitol, at the corner of Tenth and Capitol streets.

As soon as I reached my room I went to bed, but not to sleep. With my mind harassed and tortured as it was, I found it impossible to obtain sleep, though knowing it to be essential to the calming of my mental excitement. For hours it seemed ages to me, I lay there awake, casting over and over in my mind the excruciating reflections to which my discovery of the deficit of bonds had given birth. Towards sunrise, I think it must have been, from mere physical exhaustion I fell into a sort of troubled slumber from which I was not aroused till long after my usual hour of rising.

About 10 o'clock that (Saturday) morning I left my room and went directly to the capitol. Such was my mental distress, or rather distraction, that I was not conscious of any physical appetite, and went to the capitol without any breakfast. I had been unable to reach any conclusion as to what it was best for me to do, but had mentally agreed to go and consult some of my friends and be guided by their advice.

But, as I am now about to relate, this purpose was suddenly set at naught.

d a new direction given to my thoughts and actions by a *mere matter of circumstance*. On reaching the capitol I entered the second auditor's office as usual and passed directly to my desk. Just as I did so, auditor Rogers came to me with an appearance of great gratulation, and told me that "everything is all right." He then went on to inform me how he had caused a careful search to be made of the safe in his office, and that the result was the finding of a package of bonds belonging to the sinking fund, which made it "all right." This package, said, contained a \$1,000 "peeler" bond and a small fractional certificate, together with a memorandum in my handwriting, showing that a little over \$1,200 fractional certificates had been handed to Mr. Poiteaux, the transfer clerk, with directions to consolidate the same and issue in lieu thereof one \$1,000 bond and the remainder in \$100 bonds, and a new fractional certificate for the fraction less than one hundred dollars. This package, it appeared, had been in the safe about a year. It appeared on examination that the \$1,000 bond had not been signed by the second auditor but only by the treasurer, which showed that the transaction which occurred just before I was taken sick in February 1873, the recollection of which afforded me such relief in the earlier stage of my distress, had been left uncompleted and was exactly as I have herein related it.

Auditor Rogers congratulated me very warmly upon this discovery which he thought would account for the deficiency which appeared to exist at the adjournment the previous evening; or so nearly so that it showed that "everything is right," as he expressed it. As he was thus in the act of "congratulating" me, before I had time to make any response, auditor Taylor came up and also congratulated me, he having been apprised, I suppose, of the discovery of the sinking package previously to my appearance that morning. Whilst this was going on and still before I had time to take any part in the conversation, treasurer Mayo also came in, from the direction of the treasury office, and handed me a package wrapped up in yellow paper and marked "sinking fund" in his handwriting, and directly underneath this "\$4,400" in figures. He said it contained the bonds that he had "found" in the treasury safe. When he thus announced the "finding" of this package auditor Taylor remarked that this amount will over-run the account; I said nothing, but treasurer Mayo replied that the loss was in consequence of some exchanges of "consols" for "peelers" which had been made and the "difference" put into the sinking fund.

It was at this juncture that I fell into the most stupendous error. I have regretted bitterly, but unavailingly, lamented it. Instead of making known, then and there, the discoveries I had made about the deficit of bonds in the sinking fund, which I certainly should have done, I said nothing, but held my peace, and permitted the two auditors to go on in error. As to treasurer Mayo, I was mystified, and puzzled by his conduct, which to me was inexplicable then. I do not attempt to justify my conduct on that occasion, and the only excuse to be offered is the feverish and distracted mental, and physical, condition in which I then was. As I have stated, my mind had been in the most intolerable torment for many hours; I had passed a restless night, had taken no refreshment of any kind to sustain my physical energies, and had come to the capitol in the greatest anxiety and distress every way. And when auditor Rogers greeted me with the same assurance that "everything is all right," it seemed to promise such relief to my utter wretchedness, that I had not the moral courage to cast it aside. However, at that moment, the thought occurred to me, that as Gov. Kemper had not asked me for an *exhibit* of the affairs of the sinking fund, but had taken everything out of my hands, and ordered an *investigation*, and as the only suggestion I had ventured to make in the earlier stages of that investigation had been rejected by the two auditors, it was not for me now to interfere for their enlight-

enment. And thus I fell upon the idea that I would let these gentlemen go and report the result of their "investigation," as I presumed they would do, stating the condition of the sinking fund in accordance with their erroneous understanding of the facts; and after they had thus erroneously reported, I would myself take measures to discover what had become of the missing \$20,000 bonds, and make a proper report in relation to the affairs of the sinking fund in the form of an *exhibit*, specifying the errors into which the two auditors had fallen in their "investigation," and stating my own discovery of the \$20,000 deficit and my further discovery of the cause of it. So rapid was the action—or rather the vaporings—of my excited fancy, but enfeebled judgment.

In addition to this, I must also frankly admit that the thought was utterly and abominably terrible to me, that if I should announce this large deficit of bonds under the then existing circumstances—I alone being "suspected"—it would precipitate upon me an avalanche of complications to which Gov. Kemper's attack upon me had given momentum. And thus it was I fell into the stupendous error of not standing up boldly at that critical juncture with a manly statement of the facts as I had discovered them.

"The fault was mine; nor do I seek to screen,
My errors with defensive paradox."

After some further "congratulatory" remarks from the auditors, to which if I made any response I do not remember it, for my mind was bewildered and excited, I took the package of bonds found in auditor Rogers' safe, and that produced by treasurer Mayo, and went with him to the treasury safe into which I put them along with the other sinking fund bonds there. Not a word was said by treasurer Mayo, or myself, except an enquiry from me, and an affirmative response from him, as to whether I should thus put these bonds away. And nothing was said to me, further, during the day by any person about the matter, or about anything pertaining to the investigation. I presumed that the two auditors and the treasurer would now report to Gov. Kemper the result of their "investigation" as being satisfactory, and my own purpose was as speedily as possible to take measures to unravel the web of circumstances by which I was beset, and to report the true state of affairs in such manner as would enable me to protect myself.

[It afterwards appeared in evidence at my trial that that same (Saturday) morning, the warrant book of the sinking fund was found on top of the treasurer's desk in his private office; although auditor Rogers testified that *he believed* he had put it into the treasurer's safe, the previous evening and did not know how it got out again. But in the light of my statement it will now be understood. It further appeared in evidence at my trial that that same (Saturday) morning auditor Rogers instructed one of his clerks (Mr. DeWitt,) to make a copy of the said warrant book, (though for what purpose was not stated), and the said warrant book was probably in the hands of this clerk and being copied at the moment when auditor Rogers was extending his "congratulations" to me].

After going with treasurer Mayo to the treasurer's safe and putting away the two packages of bonds, I left the capitol at once to get some breakfast; and then returned to work at my desk. The action of my mind during the remainder of that forenoon, and the afternoon, was but a repetition of the ideas which had first occurred to me.

Considering that it was now necessary to go on with my official duties as I had no idea of being removed from office, I determined that as soon as the "investigation" was over, I would get all the bonds known as "bearer bonds" belonging to the sinking fund, converted into registered bonds as soon as possible for their safe keeping. My purpose was to have all the bonds belonging to the sinking fund, including the "fractional pieces," converted into registered bonds.

stand in the name of the commissioners of the sinking fund. Now, in making such conversions it was necessary to have the "fractional pieces" to be so converted, in whole hundred dollar amounts, or multiples thereof; and on several occasions previously I had purchased small "fractional pieces" to add to those on hand to make even hundreds when having such conversions made. According to the result of the "investigation" when it was adjourned on Friday evening there was a "fractional amount" on hand of the bonds belonging to the sinking fund of about \$40. As a preliminary to the conversions into registered bonds which I purposed to have made, I wanted to procure for the sinking fund an amount of "fractional certificates" to put with this \$40, sufficient to make an even \$100, say \$60. I therefore went to several of the brokers from whom I had before purchased bonds for the sinking fund, and enquired for a "fractional certificate" of \$60, informing them at the time of the purpose for which I wanted that particular amount. It happened that Mr. Cohen had nearly the amount, that is, he had "a piece" as it was called, somewhat less than \$60, and I agreed to purchase that, upon condition that I could procure from some other broker another "piece" of "pieces" to put with it and make up the \$60. He was to keep it until the following Monday, and in the meantime I was to see if I could get a "piece" to put with it for the purpose indicated. I did not, however, call for it on the following Monday morning, as will be seen in the sequel. From Mr. Cohen's I went to the banking house of Messrs. Isaacs, Taylor & Williams, and upon making the same enquiry and stating my purpose as I did to Mr. Cohen, I found that I could procure a "fractional certificate" the amount of which added to that at Mr. Cohen's would exceed the amount (\$60) which I wanted by a few dollars. Thinking that, if I could do no better, I could make this answer my purpose, I agreed to purchase it for the sinking fund, but upon the same conditions that I had made with Mr. Cohen. I received this "piece" from Messrs. Isaacs, Taylor & Williams, and put it in my pocket, with the understanding that if I did not return it on or before Monday, they would send up to the capitol and get a warrant for the amount of the purchase money. But afterwards on going to the office of Messrs. R. H. Maury & Co., I found and purchased a "piece" for exactly \$60 (with perhaps a few cents over), and as this would suit my purpose precisely, I took it to the capitol and put it into the little tin-box in which I kept the papers of the sinking fund; the understanding with Messrs. Maury & Co. being that they would, on Monday, send a clerk to the capitol and get a warrant for the amount of the purchase money; I intending, of course, to inform the commissioners of the sinking fund of the purchase and to get their approval of the same. This "fractional certificate" was in the said little tin-box at the time of my arrest, but I have no further knowledge about it except as I have learned from the published reports about the sinking fund, which show that Messrs. R. H. Maury & Co. did get a warrant for the amount of the purchase money after my arrest.

The fractional certificate which I obtained from Messrs. Isaacs, Taylor & Williams, I kept in my pocket to return to them the following Monday, in accordance with my agreement with them. It remained in my pocket until several days after my arrest; though in the multiplicity of miseries by which I was then overtaken, I forgot it for the time. But after I had been in jail several days, I remembered the matter, and sent for my coat, which was at my boarding-house, in which I found the fractional certificate safe and undisturbed. I then sent a message to Mr. W. B. Isaacs, by Dr. Dove, the physician at the jail, requesting him to call and see me on business. He came, and I delivered the fractional certificate to him, to be delivered to the firm of Isaacs, Taylor and Williams, of which he was the senior member.

Although this circumstantial relation of this transaction may not have been

necessary, I have made it for two reasons—First, because corroborative of my statement as to my intention, after the occurrence between auditors Taylor and Rogers, and treasurer Mayo and myself that Saturday morning, to get the affairs of the sinking fund into proper condition at once, with a view of ascertaining the real amount of the deficit of bonds, discovering the cause of such deficit, and reporting all the facts in the form of an exhibit; and, Second, because, as my statement of these facts can be verified on taking the testimony of Messrs. Cohens, Maury and Isaacs, the other parties to the transaction related, it will show that my recollection is very clear and distinct, even as to immaterial particulars.

During the remainder of that Saturday morning, until about 2 o'clock P. M. I was at work at my desk completing the statement I have mentioned, which I was preparing for the house committee on roads and internal navigation, showing the disposition made of the state's interest in the various internal improvement companies.

About 2 o'clock P. M., Gov. Kemper, as president of the board of public works, called a meeting of that board, which was held in the private office of the treasury, and some questions concerning certain turnpike interests were considered, and disposed of. While the board was in session, auditor Rogers came, and by invitation of Gov. Kemper, remained during the session of the board. The board adjourned about 3 o'clock, and after their adjournment, those present, namely, Gov. Kemper, auditors Taylor and Rogers, treasurer Mayo and myself, remained together in the room, engaged in general conversation, on various topics; but no allusion was made by any one to the affairs of the sinking fund. As a little time passed pleasantly in this way, I gathered up the minute-book of the board of public works, together with certain papers which had been laid before the board that day, and took them all to my desk, and locked them up. Then I returned to the treasury private office, where Gov. Kemper, and the other gentlemen named still remained, and enquired (in these very words): Gentlemen, do you want me any more this evening? Gov. Kemper was at the moment sitting on a sofa immediately under the window, and waving his hand in characteristic style answered in the negative. I looked around to all the other gentlemen in an inquiring way, and they all assented to Gov. Kemper's answer that they would not want me any more that evening. Then I told the party good-evening, and left, going directly to my boarding-house to dinner. After dinner, I went to my room, and spent some time there reading; then came down to the parlour of the boarding-house, and remained there until supper-time with several ladies.

Shortly after supper I started out from my boarding house to go to a barber's shop on Broad street to shave for Sunday, as was my custom; but as I was passing up Broad street, between Ninth and Eighth, I encountered treasurer Mayo coming out of a store about midway the square. I accosted him familiarly, and the friendly salutations which were customary between us passed as usual. I then asked him jocularly what he was doing out on the streets after dark. He replied in a mumbling sort of way that he had been making some family purchases. He then joined me and we walked together up Broad street twenty or thirty paces without any word spoken further between us. He then turned to me abruptly and asked: Look here, what made you leave us this evening? I supposed he referred to my leaving him and Gov. Kemper, and the two auditors together in the treasury office, after the meeting of the board of public works, and I replied that I had asked Gov. Kemper if I would be wanted any more that evening, and he said no, and nobody else had invited me to stay. But why do you ask me, added, and what did you all do? I noticed then that he seemed to be painfully disturbed, and I thought he had been drinking more than usual. He appeared to be in the incipient stage of maudlin drunkenness. In reply to my question

commenced speaking at first very slowly, mumbling his words, indistinctly. I gathered from what he said as we walked along that after I had left the treasury office Gov. Kemper had also left, but that he and auditors Taylor and Rogers remained and concluded to finish up the work of the "investigation" that evening; that they had gotten the work nearly done in a satisfactory manner, when auditor Rogers (I well remember the expression treasurer Mayo used)—"a damned old ranny"—took the warrant book in hand and went over the entries in it, commenting as he went along upon the low prices that had been paid for the bonds purchased for the sinking fund, "as if" (added treasurer Mayo with a bitter sneer) "he was entitled to any credit for buying the bonds at these low prices;" that after examining the warrant book in this manner for some time, auditor Rogers came to an entry in which it appeared that the amount of money paid was greater than the amount (the face value) of the bonds purchased, and after studying over this entry a little while, he had called auditor Taylor's attention to it, saying that he thought it must be a mistake; that auditor Taylor had then taken the warrant-book, and very closely scrutinized the entry in question, then holding up the page between his eyes and the light, he declared that the entry had been altered by scratching out a figure with a knife, and had then pointed out the place on the surface of the paper, where an erasure had been made; that after further examination, they found that this discovery would make a difference of some \$10,000 more in the amount of bonds purchased, making the amount of bonds on hand fall short, and thus putting matters "in a hell of a muss," (Col. Mayo's words).

This is a concise and accurate recital of treasurer Mayo's communication to me, made in great part in his own words, though not altogether so, for he was stammered in his manner, and faltering in his speech, and I had to gather his meaning as well as I could. But auditors Taylor and Rogers were (besides treasurer Mayo,) the only persons present, I believe, in the treasury office at the time of the occurrences related to me by treasurer Mayo, and they know whether the important points are here correctly stated.

While treasurer Mayo was telling me all this, we walked along, and I was silent. As the facts he related took possession of my mind, I saw that there was no probability that I could carry out my plans to unravel the mystery of the missing \$20,000 of bonds, and to disclose the facts in the form of an exhibit in the affairs of the sinking fund. Bitterly did I regret then that I had not disclosed my discoveries that morning when I came to the capitol, and was greeted by auditor Rogers with the assurance that "everything is all right." But I determined at any rate, that I would not repeat that error now; and by the time treasurer Mayo had concluded his communication to me I had formed the resolution to face affairs by disclosing all the facts in my possession, and fight out my own vindication fearlessly, as I should have done from the first.

By the time treasurer Mayo had finished making this communication to me, we had reached the corner of Seventh and Broad streets, and we both paused and stood beside the theatre lamp-post. I then answered him as I would have answered if the whole world had been listening; for my resolution was, as I have said, to fight my difficulties out on the line of full disclosures. Fortified in my own conscience, by the consciousness that I had committed no crime, I felt that my defence was in the disclosure of all the facts. I then told him, first, as to the error in the warrant book which auditor Taylor discovered had been scratched, and explained that; I reminded him how the evening before (Friday evening) the deficit of \$1,400 (face value) of bonds had been discovered, and when auditor Rogers was putting the warrant book into the treasury safe, I had expressed my desire to make an examination of the said warrant-book, and of the state-

ment of bonds purchased, which auditors Taylor and Rogers had compiled from it; and how, with his consent, I had taken the said warrant book with all the papers in it, and put it on top of the desk in the treasury office; I reminded him that he had left one of the doors of the treasury private office unlocked to give me an opportunity to make the desired examination; I told him of my going to the capitol that night to make the examination; I then went on to tell him how while making this examination, I had discovered that erroneous entry in the warrant book, and how upon comparison with the statement compiled by auditors Taylor and Rogers, I discovered that it was erroneously entered there too; I told him how I had first corrected the error in both the warrant book and the statement compiled by auditors Taylor and Rogers, by inserting the figure "1" in each. I told him that after completing this examination, and finding a deficit of about \$10,000 of bonds, the cause of which I could not imagine, I had made a re-examination, but the only result was the discovery that auditors Taylor and Rogers in computing their statement of "bonds purchased" had not included the \$10,000 of bonds purchased by the board of public works, and transferred to the sinking fund; whereby I found that the real deficit was above \$20,000 of bonds.

Then briefly I referred to the great mental agony I had endured in consequence of these discoveries and my inability to ascertain the cause of the deficit. I told him that in my distress I could not make up my mind at that early hour in the morning what to do, but that I had thought it best, at least for the present, to leave the warrant book and the statement compiled from it by auditors Taylor and Rogers just as I found them, and to take time to think over my situation and to decide upon my course, which was embarrassed mainly by reason of the "suspicions" against me which had been excited by the "rumors and reports" on which Gov. Kemper, with a precipitation which indicated a desire to entangle me, had ordered an investigation of the affairs of the sinking fund. I told him in conclusion, that with this idea in my mind, I had taken my knife and scratched out the figure "1" which I had inserted in the entry in the warrant book; then making the scratched place on the page as, I supposed, auditor Taylor had discovered it. *And I also told him in the same breath that I had then taken an india-rubber eraser and erased the figure "1" in pencil-mark on the statement compiled by auditors Taylor and Rogers, which I had put there.*

[As you, Mr. Wise, are aware, from your acquaintance with the circumstances of my trial, this conversation I held with treasurer Mayo, turned out to be the most important conversation I ever held in my life. The misuse made of it by treasurer Mayo was exceedingly fatal to me, and resulted, indeed, as you know, in bringing about my conviction—conviction of a crime which I never committed. But while talking with treasurer Mayo I never had the remotest idea that my words could be tortured into a "confession" of a felonious act. I was wholly unconscious of having committed any crime and did not dream that either my ingenuity or disposition, or his wildest imagination could misinterpret my language into a "confession" of criminality].

After thus detailing to treasurer Mayo all these facts, I added that I blamed myself very bitterly for having accepted auditor Rogers's assurance that morning that "everything is all right"; that I ought then to have disclosed the facts I had discovered them. He made no immediate response to what I had told him, and, after a pause, I asked him what would he advise me to do now? In response he made no reference to any of the facts I had told him, and to my mind, as well remembered afterwards, his flustered manner and faltering speech at this point were unaccountable. Presently he muttered: "By God, you ought to have staid there this evening." I replied that I was at my boarding-house (about a square's distance from the capitol) and if I had known I was wanted I would have

appeared at once. He said, then, that after auditors Taylor and Rogers had discovered the error in the warrant book, he left them to go to look for me, but could not find me in the capitol. I replied that he knew where my boarding-house was and he ought to have gone or sent for me there.

In the meantime, the tide of wretchedness which had overwhelmed me the previous evening again rushed upon me, and I could scarcely even think, for the expressible anguish of spirit with which I contemplated the disasters which seemed crowding upon me. In the midst of these agonized feelings, I said to treasurer Mayo that I supposed Gov. Kemper would now have an excuse for removing me from office; and as I thought of the stigma which would rest upon me in consequence of removal under such circumstances, I told him I was a ruined man, and asked him what he would advise me to do?

In response to this he said with considerable warmth of manner that he wished he had a million of dollars, and that if he had he would mighty soon set all these matters straight; but that he had no money himself and that all the clerks in his office were "so damned poor" (his very words) that they could not help him. When the bonds were replaced he said he could arrange everything without any trouble; and then he proposed to me that I should go to my friends, and raise the money and replace the bonds. I remained silent up to this point, but when he advanced this suggestion, I instantly replied (and as you, Mr. Wise, will remember, treasurer Mayo himself testified to this fact when giving his "evidence" at my trial) I instantly replied that I had not taken the bonds, and I should certainly not ask my friends to replace them now.

As already remarked, during this conversation we had arrived at the corner of Seventh and Broad streets, and the latter part of the conversation was held under a lamp-post near the theatre corner. After my last remark, as I have just stated it, treasurer Mayo made a motion as if he would go down Seventh street towards Leigh (the direction of his residence) but I proposed to him to go into Manly's liquor saloon near by and take a "night cap" before going home. He remarked that he thought he had had enough to drink already, but turned and went with me into Manly's. There we encountered several mutual acquaintances with whom we exchanged the ordinary salutations, and treasurer Mayo and I each took a drink of whiskey. Coming out of Manly's we started up Broad street, but turned down Seventh towards Grace, and when we got to the alley just in rear of the theatre, we both stopped there for a few minutes. At this time I was suffering the most intense agony of mind, and was silent. Treasurer Mayo in a tone of manner peculiar to him after taking a fresh drink went on talking about the case of Gov. Kemper in ordering the investigation in the way he had, saying among other things that he was not one of the commissioners of the sinking fund and had no business to interfere in their affairs, and so on. About this time, as I in great mental distress was pondering the matter in my mind, it occurred to me that the complications about the deficit of bonds and the "suspicions" against me which the "rumors and reports" stated by Gov. Kemper might give color, might perhaps involve me in some legal difficulty, though the idea of a prosecution for "forgery" was as far from my mind as earth is from Alcione. So, I said to treasurer Mayo that, as he was a lawyer, I supposed I could depend upon him to defend me if any trouble came upon me in consequence of these complications. He warmly responded that he would defend me in case of any trouble and we shook hands upon it.

By this time we had returned to the corner of the theatre on Broad street, and he now proposed that we should go back into Manly's saloon and get another drink; which we did, then came out, and without anything being said as to the direction either was going, we went walking together up Broad street. We both

continued silent for some time, as we walked along. Presently, out of the agony of my thoughts, I turned to him and asked—"Colonel, do you believe there is a hell?" He answered, "No, I don't. All the hell there is, is here, in this world." I said "Then, I am suffering it now."

[This remark as you know, Mr. Wise, was mentioned by treasurer Mayo in his "testimony" at my trial; but he reported it in a distorted form so as to leave an unfavorable impression against me. When I made the remark I had no idea of implying a doubt of the existence of hell, but used it to indicate, by comparison, the intensity of distress in which my mind was involved].

Soon after this, without further remark, we arrived at the corner of Fourth and Broad streets, and he made again as if he would turn off towards Leigh street; but we stopped at the street corner, and, as we stood there, he addressed me familiarly by my christian name, and asked me what I intended to do? I told him I did not know what to do, but would consult some of my other friends. He then again urged me to go to my friends and raise the money, and replace the amount of bonds which were missing. He named several of my friends who had money, and he said he knew they would let me have it. He urged it upon me that if I could get the bonds replaced, he would arrange the whole matter so that there should be no further trouble. And again I told him that I would do no such thing; that I certainly had not taken the bonds, and I was not going to do anything which would look like admitting that I had.

After this, he said nothing more, for about a minute, then started to leave me, but turned and asked me where I was going? I said, I thought of going over to the club-house, and invited him to go too. He assented, and we proceeded on up Broad street to Third, then turned down Third to go to the club-house, (which is at the corner of Third and Franklin) both remaining silent as we walked along. Just as we reached Grace street, as we passed along Third street, I told him that there was one thing on my mind which made the difficulties which beset me more distressing than everything else combined; but that I would not tell him what it was as a masonic secret. He promised to receive it so, and I then told him of it. This circumstance, I told him, made my now expected removal from office, and the complications by which I was thus beset infinitely painful to me—far more than anything else—because of the distress it would bring upon another. In reply to this, he sighed, and said that was not near so bad as the case was with him, for he was already married, and had a wife and three little children dependent upon him. The mournful manner in which he said this excited my deepest sympathy at the time. It remained in my memory, with terrible distinctness, and afterwards inspired an attempt (to be presently related), for which I shall be penitent as long as I live. We were both silent until we reached the club-house.

On reaching the club-house, we remained a few minutes in the hall, but treasurer Mayo appeared unwilling to show himself in the club parlours. I then left him in the entrance-hall, and went first into the front-parlour, but finding no one there I went into the back-parlour where I found several gentlemen, members of the club, sitting together. With them I exchanged the ordinary polite salutations and passed a few commonplace remarks. Then I returned to the entrance-hall where I found treasurer Mayo sauntering about like one in a stupor. As I approached him, he proposed that we should go and get a drink, and I assented. We went into the wine-room of the club, and each took a drink. We then went to the door of the billiard-room, and he stopped at the door and looked in, the door being ajar. There were about a dozen gentlemen in the room playing billiards. I proposed to him to go in, but he declined. During this time no

versation took place between us, except an occasional remark in relation to the things immediately before us.

Retiring from the door of the billiard room, treasurer Mayo said he was going home. I told him I believed I would remain and pass the evening at the club-house. I went with him to the front-door of the club-house where we parted; saying to him, at parting, in a playful form of slangous speech: "Well, if I don't see you again, I'll tell you good bye now."

[You, Mr. Wise, will remember how this playful remark was tortured by treasurer Mayo in his "testimony" at my trial, so as to seriously affect opinion against me. But at the moment of making it I didn't dream that my words could be twisted and turned into anything else than their usual significance, or rather significance].

As he started away, I turned to go back into the club-house, but on a sudden thought I returned to the front-door and called him. He stopped and I went out and joined him on the side-walk, and then told him very seriously that it had occurred to me that there might really arise, in consequence of the complications resulting from the investigation, some occasion for me to consult legal counsel, and I wanted to know from him whether, in such an event, I could certainly depend upon him for professional services. He again firmly assured me that I could, and extended his hand upon it. We then mutually turned to separate and as he was walking off I turned back and said to him that I was afraid the commissioners of the sinking fund might have trouble about this matter also (for I believed that, now, the manner in which the affairs of the sinking fund had been conducted would be made public and would occasion harsh criticism), and I should be very sorry for it, especially on his account and auditor Rogers's; for I looked upon him as a friend, and auditor Rogers had evinced great friendship for me that morning—as I thought. He made no response to this whatever, but walked on, going home, as I supposed, and I returned to the club-house.

On returning to the club-house, in the entry-hall, (or rather between the side-door of the hall and the billiard-room, where I started to go) I met a gentleman (Mr. H——e). to whom I owed six dollars. I mentioned the matter to him and, handing him a \$20 note (all the money I then had), requested him to take the six dollars out of it. While he was making change, I was told that certain gentlemen who were then my frequent associates were playing cards up-stairs in the card-room; and as soon as I got my change I went directly to the card-room. There I found the gentlemen indicated, engaged in a social game of cards called "pitch" and I joined them in the game. We continued to play until near midnight, nothing unusual occurring during the time, except that I drank much more than I was in the habit of drinking. About midnight the party broke up and several of the gentlemen, *en route* to their respective homes, walked down Frank-street along with me to the corner of Fifth, I also being *en route* to my lodgings. At the corner of Fifth we separated, but two of the gentlemen (Mr. E. M——o and Mr. W. M. McC——y) who were then friends of mine, taking me too much intoxicated to reach my room alone, kindly accompanied me thither. After reaching my room they remained until I had disrobed and then left me, and I went to bed at once and slept soundly until next morning. After six o'clock next morning I awoke and found myself in that condition of mind and body which most men experience who have ever been foolish enough to drink too much. On awakening the distress in which I was involved came to my recollection and I suffered the most ineffable anguish of spirit. Even at this moment I am looking back to that hour with horror, and, to my dying day, will never cease to be horrified at the bare recollection of how on that lovely

Sabbath morning, while the grey dawn was brightening the eastern skies, I sat in the solitude of my own chamber—with my nervous system shivering from the effects of an over-night debauch, my mental faculties bewildered and wandering, and my spirits sunk to the lowest depths of despondency—and contemplated the mass of misery and wretchedness by which I was overwhelmed. It would serve no good purpose now to recount the thousand thoughts, or rather vagaries, which chased each other through the anarchy of my mind, and the subject is too impressively painful to me to dwell upon it needlessly. In the vaticinations of my anguish the terrible apprehensions of removal from office and losing all that I held dear in reputation and position, from which I had shrunk in horror on the preceding Friday night, now returned with redoubled force. Scattered along the line of thought (if the vagaries of a distempered mind may be called thoughts) I saw, like wrecks upon the shore, all the cherished hopes and aspirations of my life; the bright, (though flattering) anticipations of my friends all blasted; the fond hopes of aged parents crushed forever; my life itself a wreck and myself consigned to the perpetual goadings of cruel despair. To most men amid such misery, I suppose, the thought of suicide has presented itself; and even so was it with me. I sat there, I know not how long, and pondered that problem—solved indeed by Saul the first king of Israel with the point of his own sword, but afterwards renewed to puzzle the philosophy of Plato and to inspire the genius of Shakspeare in the creation of Hamlet:—

“ Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune;
Or to take arms against a sea of troubles,
And, by opposing, end them? ”

But yet a better genius, battling in my heart, whispered words of hope. Even amid the ruin of my life, it said, a consciousness of my own rectitude would sustain me; and then courage came back for the moment denouncing as cowardly the idea of seeking an asylum in the grave, and strengthening my heart's need to meet and battle against adversity.

Turning these vagaries over in my mind, the courage to meet my difficulties manfully, as well as “the dread of something after death” had probably strained me from the rash act I afterwards attempted, as told in the sequel, was not another influence urged me on. For presently these vagaries assumed another phase. I knew that now the “investigation” ordered by Gov. Kemp would be made public, and involve everybody connected with the sinking firm in scandal and aspersions, and the thought presented itself to my distempered fancy.

“ How I might stop this tempest ere it came.”

And, in connection with this reflection, there came the remembrance of my intimate friendship which existed between treasurer Mayo and myself, and warmed my heart with regard for “Old Joe,” as we called him with affectionate familiarity. And to the sicklied fancies of my distracted heart, it seemed to me that that so poor and desolate a thing, as my anguish painted my own life, was so much to give up for the relief of a friend. In that hour of anguish, it seemed to me also, so distorted was my judgment, that it would be best even for those so dear to me that I should end these troubles at once. Then memory brought back to my mind the mournful words of treasurer Mayo to me, the night before, soothing to my fevered fancy with pathetic suppliancy; “*A wife and three children.*” And from that moment my resolution was taken.

I then considered (as well as I could in the almost frantic condition of my mind), the various methods of self-destruction. The fate of a friend of mine—a distinguished gentleman of New York—who died suddenly at the Astor Hotel

that city in 1868 from *an overdose of chloroform*, arose in my memory. For several reasons (if any vagary then may be called a reason), I selected that method. Then I closed my mind to all further reflection, and hastened forthwith to Mr. Blair's drug store, on Broad street, to procure the desired drug. At an early hour the drug store was not open, but a young man whose name I did not know, apparently just out of bed, admitted me. From him I obtained four ounces of chloroform. I had never been under the influence of chloroform, and supposed that quantity would be sufficient for my purpose. Returning at once to my room, keeping off every thought of reflection with a desperation of purpose which can only be described as insane, I undressed with haste, hastily saturated a towel with the chloroform, threw myself upon my bed, and applied the towel to my mouth and nostrils.

In a few moments I became anæsthetized, and remained wholly unconscious how long, I do not know, for I know nothing further that occurred that entire day. About 11 o'clock that night I awoke to a sort of dim half-consciousness of being in some horrible situation, the nature of which I could not for some time bring into my mind. Gradually, with returning consciousness, came back the shadowy outlines of my situation, and I remembered my desperate purpose, and the motives by which I had persuaded myself to attempt it. Physically I felt no sense of pain, or even of uneasiness, and in the extreme tenseness of my nervous system, hunger and thirst were unthought of. As consciousness returned, the recollection of my purpose took possession of my mind, and I had no wish, but a frantic desire to finish the execution of that purpose as speedily as possible. No other thought lingered for even a moment in my mind, for I repelled everything like reflection with insane energy. The chloroform vial I found was empty. Hastily putting on my clothes I almost ran back to Mr. Blair's drug-store and again procured the same vial full of chloroform. With this I again hastily returned to my room, hastily undressed, and again saturated the towel with the chloroform, threw myself upon my bed, and again applied it as before. Very soon I was again unconscious, and remained so until next morning (Monday), about sunrise; recovered my consciousness then with a like experience as of the night before, that is, remembering my fixed purpose of self destruction, and the motives which led to it; though now it seemed to me that the horrible ideas of the distressing circumstances of my situation had begun to fade away from my mind, and appeared like the hazy phantoms of almost forgotten fears. I again put on my clothes and went again to Mr. Blair's drug-store, and got the vial again refilled with chloroform. With it I again returned to my room, and proceeded as on the two former occasions. Almost immediately it seemed to me I became wholly unconscious, and remained so during that whole day. If at any time during the day Sunday, or Sunday night, or during the day Monday, any person entered my room I had no knowledge of it. I neither ate nor drank anything whatever during these thirty-six hours, and I have no recollection of seeing or speaking to a human creature, except the young gentleman at the drug-store, from whom I obtained the chloroform.

I remained wholly unconscious all that day (Monday), but that night, at what I do not know, I was awakened by a noise of some kind, I do not know what, and arose from my bed in a less than half conscious condition, and in some manner, I do not know how, encountered a person who I now know was policeman Pat. Woods, though I do not know it from my own memory. My recollection of whatever occurred then is only a vague, indefinite, and shadowy impression like a sick man's dream of a terrible tragedy. Images and fancies were floating around me indistinctly and something or somebody was whispering to me

something about *the carotid artery*. And besides this weird impression I have recollection whatever of that terrible hour of my life.

My first return to consciousness, as I recollect it, was at a late hour of the night when, awakening from sleep, as I lay upon my bed, I saw the light burning and policeman Woods sitting in my room. After reflection for some time I collected my powers of thought as well as I could and a dim idea entered my mind that policeman Woods was there to arrest me. I further reflected in silence some minutes longer (if my feeble efforts to *think* may be called reflection) and then I spoke to policeman Woods, and asked him to let me see his warrant; out of my dim ideas the first tangible thought I was able to gather related to making my legal defence. In reply he assured me in a kindly tone that "there was no warrant." In the feeble condition of my mental powers then I could not possibly pursue any connected line of thought, and the subject passed out of my mind for the moment. After a pause of a few minutes longer, during which I had an indistinct remembrance of unrecognized forms and faces having been flitting about me, I enquired of policeman Woods, who had been there? He replied that a great many of my friends had been to see me, but named no one. Then after another pause I asked him if treasurer Mayo had been there? for as my mind began to re-assert its power I thought that treasurer Mayo, of all my friends, would be among the first to see me in sickness or trouble. Policeman Woods told me that treasurer Mayo had not been there. No more was said by either of us and presently I fell asleep again.

I have now related to you, Mr. Wise, everything which, for the lack of more accurate terminology, may be called the *res gestae* of the case, and if it was a question for the original consideration of an enlightened and impartial public I would rest it here. But the case has been tried in a court of law; witnesses for the prosecution, but none for the defence, have been examined; a judge has delivered his instructions to the jury; that jury has returned an adverse verdict; an appeal has been taken to a higher court; that appellate tribunal has affirmed the judgment of the lower court; executive clemency has been invoked in vain. And now, in appealing to the still higher tribunal of public opinion, as my last resort, it will be required that I adduce reasons and evidence in order to obtain the desired reversal of the judgment once pronounced. That is what I purpose to do now. But at this point I may be allowed to remark upon the greater difficulty there is in proving a negative to a proposition once lawfully affirmed than there is in refuting an accusation when first preferred. It is very much more difficult for me to convince the public that I never committed the crime of which I was convicted than it would have been, under ordinary circumstances, to convince the jury who tried my case that I was not guilty. Yet that is what I now propose to do.

If, indeed, it were now practicable to re-empanel the same jury who tried my case and submit it to them *de novo*, I would be perfectly willing to abide by their verdict, with the sole stipulation that they should be made cognizant of and should consider *the truth, the whole truth, and nothing but the truth*. I believe that jury was a fair one, though I never knew but four of them personally, and none of them intimately; but I shall show herein that with all their fairness, and without any fault of theirs, they formed a verdict which was cruelly unjust in itself and flagrantly grievous in its consequences. And this will appear from the facts and circumstances of my summary arraignment, precipitate trial without adequate opportunity to prepare for defence, and consequent false conviction, as I shall relate the same.

The next morning after my arrest—that is to say, Tuesday morning February 10th, 1874, I was too ill in body to leave my bed. Dr. Coakley came to see me professionally and I was apprised that he had been hastily called in to attend

the previous night. For several days, (until the following Sunday, I think) I continued ill and remained under Dr. Coakley's medical treatment. During all this time I was kept in custody by policemen who relieved each other periodically in my room; an occasional visitor being permitted to see me in their presence. I was not permitted to see the newspapers of the day and was kept in ignorance of whatever was published in regard to me or my affairs. I know that public opinion in regard to my case was formed from the statements then made in the newspapers, which, as I have said, I was not even permitted to see. What accounts were published I have never been able, even to this day, to see; and I can only surmise their character from certain testimony of one of the reporters for the *Dispatch*, who prepared the report for that journal. Upon the occasion of the hearing of a motion in my behalf for a new trial on the grounds of treasurer Mayo's insanity, Mr. W. D. Chesterman, a reporter for the *Dispatch*, was examined as a witness for the prosecution and he deposed as follows:

"I had a conversation with Col. Mayo on the night of the arrest of Mr. Coleman, about two weeks before the examination at the police court. I made full notes of what he said. He gave me a complete history of the sinking fund matters, and a clear and connected narrative of them. I don't think I can give his words about the erasure, but I can give the idea. He said that he and Coleman were going to the club-house; he told Coleman the result of the investigation made by the board that day, and the discovery of the altered entry. After telling Coleman about this, much to his surprise, Coleman said: "Colonel, I did it." He said Coleman had talked about this transaction in an incoherent way, and said he knew it would bring disgrace on him; but Coleman said one of the greatest troubles he had was the fear that it would hurt Mayo and Rogers. He said that at the club-house, when they were about to part, Coleman said he had no wish to survive his disgrace. He did not give me any statement about Coleman making any explanation of the reason why he had made the erasure; and I was much surprised when I heard afterwards of his testifying to such an explanation. He did not lead me to believe that Coleman offered any excuse for the erasure."

In the same deposition, Mr. Chesterman further states that treasurer Mayo *ought him several times*, and repeated this statement to him again and again.

Now, treasurer Mayo is an astute lawyer, with a large experience in the ways of the world, and Mr. Chesterman is an expert reporter. As I have said I have not been able to see the "reports" which were published at the time, but it is easy enough to judge now as to the character and tone of a "report in full," when put out by an expert reporter from "full notes" of a sinister "statement," published by an astute lawyer—such a statement as Mr. Chesterman has sworn that treasurer Mayo, not only made to him, but repeatedly sought him for the purpose of repeating to him. Bearing in mind that the real facts in the case were as I have hereinbefore related them, I can find no words to characterize the fact, which was now patent to the world, the fact, namely, that in the very hour when I was prostrate upon my bed in physical pain and mental distraction, treasurer Mayo, for his own purposes, was engaged with an expert reporter for the most widely circulated newspaper in the state, "cooking up," for the public ear, a pretended "statement" whose atrocity in falseness could only be equalled by its flagrancy of purpose, to go forth with his *imprimatur* as treasurer of the commonwealth, which I should be falsely published to the world as a self-confessed felon. In the knowledge of this fact, which I have acquired since, I do not wonder, as I did then, that when I lay there in distress, prostrate in body, enfeebled in mind, and crushed in spirit, nearly every friend I had in the world and every one of my kindred and blood, save only my aged parents and two of my sisters, (they were hundreds of miles away), left me to my fate, and failed even to utter a word of sympathy or of kindness!

But I was not permitted *then* to know anything about the publications in the newspapers. I was kept a close prisoner, not only debarred from resisting the designs of my enemies to ruin me, but kept in ignorance even that such efforts

were making. As you well know, Mr. Wise, public opinion in regard to such case as mine is morally certain to be formed and fixed by the first "send-off" the newspapers about it. I will not stop here to inveigh against the practice of the daily press, which ever eager for "sensations," miscalls its moral scavengers "enterprising reporters," and is never so self-complaisant as when able to publish something to please the pruriency of the depraved classes of society. Only too often, by such a practice, the press inflicts infinite injury upon the innocent, and nearly always accomplishes the ruin of its victim, but never promotes the public good. A hundred years ago Edmund Burke, declared upon the floor of the British Parliament, that the true palladium of personal liberty was no longer the right of trial by jury, but the fearless voice of a free press. From my own miserable experience, I have learned the bitter fact, that to a free citizen the right of trial by jury will avail but little, when a false conviction has been assured in advance by means of an atrocious "trial by newspaper," where everything is settled in favor of the prosecution, and no word for the defence is permitted!

It should surely seem, I think, that the "send-off" of the case thus "cooked up," and published in the newspapers, ought to have satisfied the most truculent ingenuity in its design to deprive me of all assistance from friends, and of even the sympathy of my own kindred, and to procure my condemnation by the public before my denial could be heard—without, indeed, allowing me any opportunity to deny. But it appears, in fact, that this was not sufficient. For, following up the "cooked-up" accounts published in the newspapers, I have since learned that the thousand tongues of social scandal were also then enlisted in a sort of "hue and cry" against me. I have since been told that in some of the social circles, where I had been esteemed as a friend, the spirit of scandal was re-evoked, and insidiously entertained with the wildest tales of my imputed "irregularities" from my boyhood up, and the most atrocious *lies* were circulated against me with "damnable iteration"—all intended by my enemies to stifle the smallest spark of sympathy for me by making it appear that the crime alleged against me was but the sequel of a life mis-spent in evil practices. It is needless now to name the many atrociously false "rumors and reports" then made up and put in circulation against me, as I have since been told. You, Mr. Wise, no doubt, heard some of them at the time. A close prisoner myself then, no word of them was allowed to reach my ears, and now I can only put them from me as belonging to that class of atrocious wrongs for which society affords its injured members no remedy on earth, and which, therefore, a gentleman can only "in the hot cell" leave his heart shut up."

One of these "reports" I may name, however, because of its direct effect in doing me a great injury at a critical moment. This "report" was as follows: When it became known that Gen. Bradley T. Johnson was engaged for my defence, it was forthwith "reported" that during that gentleman's absence in Europe the preceding summer I had occupied his residence in Richmond, and had put him for it in bonds belonging to the sinking fund; and that *that* was the reason *he* was willing to defend me now, when other Richmond lawyers would not do so. This "report" was circulated in connection with the statement that Mr. Deane (now dead) had discovered that certain bonds known by their serial numbers to have belonged to the sinking fund had been brought to the second auditor's office by an agent for Gen. Johnson, and converted into other bonds in his name. It was afterwards proven in court, and also before the legislative committee of investigation, that Gen. Johnson was an innocent holder of the bonds in question, and that in fact they had been sold by treasurer Mayo, and purchased by Messrs. Packer, Campbell & Co. as agents for Gen. Johnson. And, in fact, I had never occupied Gen. Johnson's house at all. But the story became a matter of grievous injury

ne by reason of its frequent repetitions and the credence given to it. It had the effect to deter even those few of my friends who were disposed to befriend me from doing so, lest they too should become the target for the shafts of slander.

The first friend who came to show me any kindness was Mr. S. Sprigg Campbell; and there never was but one other who came at all. He came on Wednesday, the second day after my arrest, and found me ill in bed and unable to rise. After some general and desultory conversation, in which I took but a languid part, for I was too feeble in body and mind for any sustained effort, Mr. Campbell asked the policeman, who was then on duty guarding me in my room, to go out into the passage-way for a few minutes, and leave us to have a little private talk. Mr. Campbell seemed to have influence with the policeman, and his request was complied with. Mr. Campbell then took a seat beside my bed and opened the conversation in regard to my case. I remember it as well as though it had happened but yesterday, for my mind was impressed and has retained most the very words of the whole conversation. Addressing me familiarly, as he was wont to do in our hours of social intimacy, he said: "William D., if you were short of bonds why didn't you let us know? We could have fixed it up for you somehow." I replied that I had not known anything about the bonds being short myself, and had been as much surprised as anybody could have been at finding that there was a deficit. He then asked me some questions in regard to the investigation and the conduct of Gov. Kemper towards me, which I answered in accordance with the facts; and he then made a remark to the effect that public sentiment was very much "down on" me, but as I had not seen the newspapers and he made no reference to their accounts, I did not comprehend the extent of the public feeling against me, and made no reply. Presently, he asked me what arrangements I had made about securing counsel to defend me? I replied that I had not been able yet to give that subject any thought and that I was worried now in considering it, because I had no money to pay for professional assistance. "Then, you are dead strapped?" he said enquiringly. I told him that I had not as much as ten dollars in money. "Well," said he "I'll get Brad. Johnson and Willie Royall for you, if you are willing." "But" said I "how am I going to pay them?" "Oh," said he, "Brad. ain't going back on the boys"—meaning a certain set of young men, including himself and me, who were on terms of social intimacy with Gen. Johnson and frequent visitors at his house. I told him that if he could arrange it for me I would be very glad to have the professional assistance of Gen. Johnson and Mr. Royall. He said he would attend to it, and about that time the policeman re-entered the room and Mr. Campbell rose to leave. As he was leaving he kindly enquired if there was anything which, as a sick man, I would wish, and with great kindness insisted that if at any time I desired any such thing that I should let him know, and that he would procure and send it to me. We then shook hands with me and left. I have never seen or heard from him since, except in the court-room during my trial. I shall always gratefully remember his kind advances to me at first, and in my meditations, since, have often thought that he was deterred from further kindness, and even from any communication with me, by the fear of the thousand tongues of social scandal which had been turned loose upon me and threatened every one who approached me. The next day (Thursday), Gen. Bradley T. Johnson came to see me, and informed me that he had done so at the request of Mr. Campbell, who told him I desired counsel. He then told the policeman guarding me in my room that he was my counsel, and desired to be alone with me. The policeman then withdrew, and Gen. Johnson took a seat beside my bed, I being too weak to sit up. I was too much enfeebled mentally and physically to sustain any prolonged conversation, or participate in an important discussion. But briefly and as lucidly as I could, I answered

such questions as he asked me. He questioned me particularly in regard to what occurred between treasurer Mayo and myself the preceding Saturday night, and I related to him many of the details of that interview, just as I have written them out in this letter to you, Mr. Wise. He made a remark, as I afterwards remembered, to the effect that what I told him was very different from the account published in the newspapers; but as I had not been permitted to see the newspapers, and had not the remotest suspicion of the immensity of the misrepresentations which had been made, I failed to understand the force of Gen. Johnson's meaning and paid no attention to his remark at the moment. Gen. Johnson soon brought the interview to a close, saying that he was going to see treasurer Mayo.

I do not believe it was more than half an hour from the time he came to my room until he left, and in that brief space of time, even if I had been entirely well in body, and as clear-minded as I am at this moment, it would have been impossible for me to relate the full particulars of the facts so as to impart a thorough comprehension of the case. And yet I never had, up to the hour of my trial, any full opportunity to consult Gen. Johnson or any other lawyer about my case or to discuss the facts with him or any other of the gentlemen who appeared in court as my counsel. As Gen. Johnson left me, the policeman returned to my room and resumed his watch as my custodian.

The following day (Friday) Gen. Johnson again called to see me and found me still in bed and unable to sit up. This time, as before, the policeman, at Gen. Johnson's request, retired and left us alone; but the interview was again very short—shorter than before—it being later in the day and Gen. Johnson having another engagement, as he informed me, which compelled him to hasten. On this occasion he did nearly all the talking himself. He informed me that he had been to see treasurer Mayo, who was then sick in bed; he informed me that he found Mayo "perfectly wild," (Gen. Johnson's own words) in his manner, and almost incoherent in his talk; but that, with great difficulty, he had gotten him to talk about the occurrences of the preceding Saturday night. He said that treasurer Mayo had declared at first that he could recollect nothing whatever about any account I gave him that Saturday night about the erasure in the warrant book, except that I told him that I did it. "But," said Gen. Johnson (and I well remember the animation of his manner at that point), "I told him, Mayo, you must recollect it, for Colen is very clear in his account of it, and *it must be so!*"

Gen. Johnson told me that after this treasurer Mayo said, in effect, that he believed he did have some recollection of my explaining to him what I had done in the matter of the alleged erasure in the warrant book, and that he would try to fix it in his mind more clearly. Gen. Johnson said that treasurer Mayo had then gone off into some "wild talk" about a supposed missing receipt for some railroad bonds, or something of the sort, which had no connection whatever with the affairs of the sinking fund, and so he (Gen. Johnson) had left him.

Gen. Johnson also then informed me that my examination before the police just had been set for the ensuing Saturday, but that treasurer Mayo would not be allowed to appear then as a witness, and that the examination would therefore be postponed until the following Tuesday. He then advised me to "make myself easy," and not be worried, and to get well as soon as possible. And with that advice he left me.

Mr. W. L. Royall, came to see me next day (Saturday). He is Gen. Johnson's law partner, and came at the suggestion of that gentleman as I understood. I was very weak, and debilitated, both in body and in mind, but I arose from bed to receive Mr. Royall, and sat leaning my head on a table to talk with him; though once or twice during the short interview with him I had to return to my bed, and lie down a few minutes to recover my exhausted strength. At Mr. Royall's request

the policeman, then having me in custody, left us alone, as had been done, on the previous occasions, when Gen. Johnson had called. Mr. Royall made some kindly enquiries as to my health and the like, and then, as I was too weak to go to any detailed statement of the facts in my case, I sat leaning upon the table, and waited for him to question me about anything concerning which he might wish to be informed. He asked me some questions, and I answered them in accordance with the facts, and then Mr. Royall told me that there was no case for any criminal prosecution against me, except, perhaps, what might be made out of a certain "confession" as to an erasure in the warrant book of the sinking fund, which it was alleged that I had made to treasurer Mayo on the preceding Saturday night. Again I was at the great disadvantage of not having seen the reports published in the newspapers about my case, and did not clearly understand Mr. Royall's reference; but I told him I had made no such "confession." His remark implied, and endeavored to enlighten him as to the facts connected with my interview with treasurer Mayo, on the occasion named; and, to that end, I detailed a number of the incidents of that interview, showing that I could not have made any such "confession" as he seemed to think I had. Afterwards Mr. Royall assured me that, in his judgment, there was "no case," whatever, (as lawyers call it), against me, and that I might dismiss all apprehension from my mind on the subject at once. With this assurance Mr. Royall left me and the policeman resumed his place as my custodian.

As I was still too sick and feeble to leave my room, I was informed that I could continue to remain there in custody of the policemen. I heard nothing further about my examination before the police justice, which, Gen. Johnson had told me, had been set for that day (Saturday), but presumed that it had been postponed on account of the inability of treasurer Mayo, from illness, to appear. Gen. Johnson had told me it would be.

[In this connection, I desire to call your attention, Mr. Wise, to the fact that, afterwards, on the trial of the question of treasurer Mayo's insanity, his physician, referring to treasurer Mayo's illness at the time Gen. Johnson visited me, as I have related, testified as follows: "At that time I thought it the result of some error in his habits of drinking. I looked upon it as a case of delirium tremens. My mind is now disabused of that impression. I do not think that it was,"—implying that his attack was not of delirium tremens, insanity.]

On Sunday I was somewhat better, and that evening about twilight the policeman, then having me in custody, kindly proposed to walk out with me for the benefit of my health. We walked a few squares and then returned to my room.

The next day (Monday), I was still further a little improved in health, and on that day I began to recover my strength sufficiently to be able to give some consideration to my case myself. I asked the policeman, having me in custody, to let me see the newspapers of the day. He told me that he had been particularly instructed not to let me see the Richmond city papers. I then asked him some questions as to what people said about my case, but he replied that he had been cautioned not to tell me anything about such things. And thus was I, a citizen, in a free country, kept a close prisoner, and not even permitted to know what atrocious means my enemies were employing to ruin me, and was prevented from taking any measures to defend myself against them!

That night (Monday), the policeman keeping watch over me took me out to walk again. I was reluctant to go, but yielded to his persuasion to do so. He gave me the direction of the walk to him, and he took direction up Broad street. Several times, as we passed along that street, he persuaded me to enter drinking-

saloons with him, and drink intoxicating liquor. I at first declined his invitations to drink, but he insisted, and I was foolish enough to allow myself to be persuaded; and in this way it was not long before I had taken four or five drinks with him, and began to experience their natural effect. After walking far down Broad street, the policeman turned southward with me, and we went down Franklin street. As we were passing down Franklin street by Gen. Johnson's residence, by permission of the policeman, who remained at the door, I went in to see Gen. Johnson. That gentleman received me cordially, and I remained and conversed with him for some time. Nothing of any significance was said either of us in regard to my case. As you, Mr. Wise, will no doubt understand, I was not in a condition to discuss anything with him, either with judgment or sobriety. While I was still in conversation with Gen. Johnson, (he being well acquainted with the policeman then having me in custody,) the latter also came, and joined us in our conversation. During the whole time I spent at Gen. Johnson's house, nothing in regard to my case was said, and the conversation was trifling in its character; except one incident, perhaps, which was as follows: During our walk the policeman had suggested to me the idea of flight, and proposed to allow me to escape. I had declined the proposition, and told him that I would not entertain it for a moment. He then urged it, telling me that the train on the R. F. and P. Railroad was just about to start, and that he would "go 'round the corner" and leave me to get off if I wanted to go. And now at Gen. Johnson's house, I told him, in the presence of this policeman, about his proposition to permit me to escape; and I said to Gen. Johnson that I had declined to entertain the idea, because as he (Gen. Johnson) knew, *I could not afford not to be tried*; knowing myself that I had committed no crime, I did not dream that a trial could result otherwise than in acquittal.

Leaving Gen. Johnson's house to return to my boarding-house, the policeman walked with me down Franklin street. When we got in front of the Richmond Club-house, he asked me if I did not belong there? I told him yes, I was a member of the club; and then he said he had never been in the club-house, and asked me if we could not go in and get a drink. In the folly of my half-intoxication, I took him in and, on my order, we were supplied with drinks. Of course, I would not have entered the club-house, under the circumstances, if I had not been under the influence of the liquor which this policeman had persuaded me to drink. Intoxication is, indeed, but a shabby excuse, and I am mortified to think that I should have to make it.

The next morning (Tuesday) Gen. Johnson sent his son to my room to tell me that treasurer Mayo was still unable to appear as a witness; that therefore the examination before the police justice, which had been fixed for that morning, would be again postponed; and that I need not go to the police court but remain in my room in the custody of the policeman. A few hours later, however, a policeman came with an order to bring me before the police justice. I went forthwith with this policeman to the police court-room, and shortly after I got there Gen. Johnson and Mr. Royall also came. The police justice, without going into the case at all, decided to postpone the examination until the following Saturday, because of treasurer Mayo's inability to appear as a witness. And thereupon he ordered my committal to jail, without bail, and I was at once taken by the policeman, who attended the police court, to be conveyed to the city jail. I had left my room with the expectation of returning to it in the course of an hour or so, and had made the least preparation for incarceration in jail. So, when I started off from the police court in the custody of this policeman, to be conveyed to jail, he requested him to accompany me by way of my room (not more than two squares out of the direct route to the jail), in order to procure some things which it was

cessary for me to have in my imprisonment in jail, including a vial of medicine which, under my physician's order, I was taking at intervals of every few hours. To my astonishment this policeman gruffly refused my request. In all civilized communities it is usual to accord such a request to the meanest culprits, and when it was refused me by this policeman, I was so utterly astounded that I said nothing more to him, but walked on in silence to the city jail.

On reaching the jail I stated my request to the custodian in charge, (Mr. Franklin) and he told the policeman to return with me to my room for the purpose indicated, and he did so. After going to my room and getting the things I needed, I returned with the policeman to the jail. From that hour I was kept a close prisoner until my release in October last. I have often reflected since that the conduct of this policeman towards me was indicative of the disposition of his superiors in authority, in their treatment of me.

My confinement in jail seriously retarded the recovery of my health. In a day or two yellow jaundice supervened and my complexion became as yellow as lemon and so remained until after my trial.

On Saturday, February 21st, four days after my incarceration, I was again taken to the police court for examination. All the witnesses for the prosecution, including treasurer Mayo, were in attendance. The commonwealth's attorney (myself, Mr. Wise) also appeared for the prosecution. I had not seen nor heard of Gen. Johnson or Mr. Royall during my confinement in jail, but both now appeared as counsel for me before the police justice.

For the first time I was now permitted to see the warrant on which I had been arrested. It was as follows:

City of Richmond; to wit:

To all, or any one of the Police officers of the city of Richmond:

Whereas, Jos. Mayo, jr., Wm. F. Taylor and Asa Rogers, have this day made complaint and information on oath before me Joseph J. White, P. J., of said city, that on, or since, the 11th of November, 1873, at said city, William D. Coleman did unlawfully and feloniously forge and obtain entry upon a record warrant book, belonging to the office of the second auditor of the State of Virginia, purporting to be an entry of the purchase, by the board of commissioners of the sinking fund of the State of Virginia, of coupon bonds of the State of Virginia, to the amount of eight thousand, one hundred dollars, with intent to defraud.

These are, therefore, in the name of the commonwealth of Virginia, to command you, forthwith, to apprehend, and bring before me, or some other Justice of the Peace of said city, the person or persons of the said William D. Coleman, to answer the said complaint, and to be further dealt with according to law.

And, moreover, upon the arrest of the said William D. Coleman, by virtue of this warrant, I command you, in the name of the commonwealth of Virginia, to summon Jos. Mayo, jr., Wm. F. Taylor and Asa Rogers, to appear at the Police Justice's Court as witnesses to testify in support of the commonwealth against the said William D. Coleman, at 12 o'clock on the 10th day of February, 1874, that is to say, on the next day following the day of arrest. And have then and there this warrant with your return thereon.

Given under my hand and seal this 9th day of February, 1874.

[SIGNED] J. J. WHITE, P. J., [SEAL.]

On reading this warrant, I began to comprehend the nature of the situation in which I was placed. I now better understood the meaning of what Gen. Johnson had only vaguely communicated to me touching the false account treasurer Mayo had given of the conversation between himself and me, on the Saturday night succeeding the commencement of the "investigation." And the conclusion forced itself upon my mind, that a cunning plot had been concocted to charge me with this pretended "false entry" in order to make it appear that I had taken the bonds of the sinking fund which were missing. Still, I felt confident that this plot would be frustrated by setting forth the real facts. Then and there, therefore, in the police court, in a whispered conversation, I briefly reminded Gen. Johnson, as my counsel, of what I had told him touching the facts of the

conversation between treasurer Mayo and myself that Saturday night, which treasurer Mayo had falsely represented as my pretended "confession."

The warrant book of the sinking fund and all the papers and memoranda made and used for the purposes of the "investigation" were produced in the police court; and among them was the statement, in lead pencil-marks, which had been written down by auditor Taylor, on Thursday afternoon, the first day of "investigation," showing the various amounts of bonds purchased for the sinking fund as they were severally called off from the warrant book by auditor Roger Now, I had had no possible access to this paper except on the Saturday morning preceding my arrest, between the hours of 12 o'clock midnight and 2 o'clock A. M., when, as I have related, I made the examination, discovered the erroneous entry and corrected it, but afterwards restored it to the condition in which I found it. And now, in the police court, while hurriedly reminding Gen. Johnson, in a whisper, of what I had really told treasurer Mayo, I asked him to get the statement compiled by auditor Taylor in pencil-marks, from among the papers and memoranda produced; and he did so. And, then and there, while this paper was temporarily in Gen. Johnson's hands, I pointed out to him on the said paper the spot where the numeral "1" had been written in pencil-mark in front of the numeral "8" in the entry "8,100"—corresponding to the entry in the warrant book alleged to be "forged,"—and had afterwards been erased, with india-rubber, precisely as I had told him, and as I have hereinbefore related, that I had done it on the Saturday morning preceding my arrest, between the hours of 12 o'clock midnight and 2 o'clock A. M. In response to my whispered enquiry as to whether he understood what I was indicating, Gen. Johnson nodded his head affirmatively.

I now, with all respect, put you, Mr. Wise, upon the witness-stand to corroborate what I have just related touching this incident in the police court-room. For, you have since stated that *you saw me in the act of pointing this out to Gen. Johnson.*

I expected that this evidence would be a material point in my defence, because it was evidence in the nature of a physical fact going to prove that treasurer Mayo's "testimony" as to my alleged "confession" was craftily false and atrociously untrue. But it was never even alluded to by Gen. Johnson or any other of my counsel in conducting my "defence." I can imagine no reason why so important a point for my defence was ignored and suppressed, unless it was because of an indisposition to secure my acquittal by attacking treasurer Mayo's veracity. In a deposition subsequently made by Wm. L. Royall Esq., on the hearing a motion in my behalf for a new trial on the grounds of treasurer Mayo's insanity, Mr. Royall admitted that he and Gen. Johnson, were about this time frequently in consultation with treasurer Mayo about his (Mayo's) affairs, either as friends or professionally; and in a note to me after my trial, Mr. Royall informed me, in effect, that the plan and purpose of my counsel for my defence was that I should be convicted by the jury, and then escape the penalty of the law by reason of the favorable construction of a statute by the Appellate Court. Such a scheme being in the interest of treasurer Mayo, rather than in mine, might, I think, be fairly inferred that in conducting, my "defence" less zeal was shown for my vindication, than for the protection of treasurer Mayo.

Upon the thus unchallenged false testimony of treasurer Mayo, mainly, the police justice decided to send me on to the Hustings Court for indictment by grand jury, and I was thereupon forthwith again conveyed to jail and locked.

For several weeks after my examination before the police justice I remained in jail, for the most part ill in body, enfeebled, harassed, and, at times, almost demented. I will not dwell upon the sufferings both of body and mind, which I then endured, for I have already sufficiently indicated the nature of the grievous

justice I then suffered in being harshly deprived of the privilege of bail, and subjected to confinement in jail, which was not only detrimental to my physical health, but also debarred me from all opportunity to make the necessary preparation for my own defence, whilst I had no friend to do it for me.

On Friday, the 27th of February, I think it was, Gen. Johnson came to the jail to see me. During this interview he talked to me in fine spirits about the result of my impending trial and gave me the most confident assurance of my certain acquittal. He made few, if any, enquiries of me, but consumed most of the time, himself, in telling such things as the following: He said that you, Mr. Wise, attorney for the commonwealth, had enlisted a number of the officers and employees in the basement of the capitol to assist you in ferreting out evidence for my conviction. That with such assistance you had discovered from the books in the second auditor's office and the treasury office, that about a year before my arrest, six registered bonds for \$10,000 each, standing in the name of the commissioners of the sinking fund, had, by my direction, been converted into a like amount of coupon bonds, payable to bearer; that one of these said registered bonds, was numbered No. 112, which had been thus converted into ten coupon bonds, payable to bearer, for \$1,000, each, bearing given serial numbers. And that the books of the two offices also showed that, some time afterwards, these same ten coupon bonds, identified by their serial numbers, had been brought back to the second auditor's office by Messrs. Parker Campbell & Co. and converted into a like amount of other bonds to stand in his (Gen. Johnson's) name. Now, as this registered bond numbered No. 112, which belonged to the sinking fund, represented just exactly the amount (\$10,000) by which the amount of bonds which had been purchased for the sinking fund had been reduced by the alleged alteration in the warrant book of the sinking fund, you, Mr. Wise, was exceedingly confident of my certain conviction on the evidence of a motive on my part, to be thus adduced. Gen. Johnson added that you, Mr. Wise, was highly elated at the prospect of so brilliant an exhibition of your astuteness.

I was on the point of telling him that I knew nothing whatever about these bonds which Messrs. Parker Campbell & Co., had converted into other bonds in his (Gen. Johnson's) name, but before I could do it, he, sinking his voice to an impressive stage-whisper, added: "*But Campbell's books show, and Sprigg Campbell will testify, that Mayo sold these bonds to them, and that you had nothing to do with that transaction.*" Upon these supposed "discoveries," he said you, Mr. Wise, was constructing your "theory" for my prosecution, and he laughed derisively at the thought of your discomfiture, when you should put Mr. Campbell on the witness-stand, as a witness for the prosecution, and find that his testimony broke down the prosecution. On leaving me, he declared himself fully prepared to defend me successfully, and gave me the most confident assurances of acquittal whenever I came to be tried.

Relying on these confident assurances I gave up the management of my defence entirely into the hands of Gen. Johnson, and Mr. Royall. For besides being restrained of my liberty so that I could not act in my own behalf, I was not in condition, either bodily or mentally, even if I had been a lawyer, to manage my own defence. A sick man must depend upon his medical adviser for proper prescriptions for the restoration of his health, and a person, in my condition at that time, is especially entitled to the benefit of that provision of the Constitution of the United States, which provides that no accused person shall be tried without having the benefit of counsel for his defence. This being the situation of affairs, I endeavored as well as I could, to possess my soul in patience, and carefully followed the advice of my physician who was constantly attending upon me, believing, that in a few weeks, I should be released from the hardships of

imprisonment, vindicated from the charges against me, and restored to my rights as a citizen.

But I was doomed to a very bitter and abrupt awakening from this fancied secure reliance on my counsel. For, late in the afternoon of Thursday, March 5th, Mr. Royall came to the jail and, to my utter astonishment and consternation, informed me that Gen. Johnson had sent him to tell me that he had determined to retire from my defence. I had not then been informed of the action of the grand jury, but by a subsequent comparison of dates I found that Mr. Royall's message from Gen. Johnson was delivered to me on the afternoon of the same day that the grand jury met and acted upon the charges against me. It was less than four days, including Sunday, from the hour fixed by the court for my trial. Mr. Royall informed me that Gen. Johnson's reason for retiring from my defence was that certain rumors and reports had been put in circulation very injurious to him, relating to the ten coupon bonds into which registered bond No. 112 had been converted, the same having been purchased for and converted into other bonds standing in his (Gen. Johnson's) name. Mr. Royall also informed me that the city was "full of wild rumors and reports" about the transfer of the bonds in question, grossly calumnious both of Gen. Johnson and myself.

My opinion then was, and still is, that the supposed "discoveries" from the books in the second auditor's office had been gossipped about as scandal and that scandal propagated by my enemies, for the purpose of still further inflaming the public sentiment against me, with a view to its effect at my trial. The purpose was also to implicate Gen. Johnson by these slanders, and thus deter any other gentleman from rendering me such assistance as he had agreed to render; other gentlemen would be afraid to approach me, or to have anything to do with my defence, lest they also should be aspersed and calumniated as Gen. Johnson had been.

After delivering Gen. Johnson's message, Mr. Royall added that he, however, would continue to act as counsel for me, but only upon condition that I should secure some older and more experienced lawyer to take the lead in my defence. He said, with great modesty, that he was inexperienced; that under the peculiar circumstances of the case, extraordinary efforts would be made to secure my conviction; and that, therefore, he was unwilling to assume the whole responsibility of my defence. I thanked him, and told him that in selecting other counsel to associate with him I would consult his preference and asked him to tell me whom he would prefer. He named Hon. W. W. Crump, Col. Jno. B. Young, or Col. Robert Ould. I willingly assented to his choice, my understanding being that he meant that any of these distinguished gentlemen would be agreeable to him; and that he did not contemplate securing the services of more than one of them. At my request he agreed to go at once and ask Judge Crump to assist him in my defence. We discussed the matter of my paying Judge Crump for his assistance and came to an agreement about it.

Mr. Royall then left me to go and see Judge Crump, with the understanding that if Judge Crump would not assist me, he would ask Col. Young to do it, and if he refused, then Judge Ould would be asked to do it.

The next day (Friday) Mr. Royall returned and reported that his mission had been wholly unsuccessful. He said he first went to Judge Crump, but the gentleman replied, in effect, that my counsel would have to assail treasurer Mayo and that the relations between treasurer Mayo and himself were of such a nature as to make him unwilling to assail him in my defence. Mr. Royall further informed me that he had also approached Col. Young, but he replied that he would not undertake my defence unless I would pay him \$1,000 down; and this

oyall knew I could not do. He said he had not approached Judge Ould because he thought it would be unavailing.

In conclusion, Mr. Royall told me that, in his opinion, I could not secure counsel from the Richmond bar, because the local public sentiment was very strong against me; and because treasurer Mayo was a popular member of the Richmond bar. He then advised me to try and get counsel outside of the city of Richmond; and intimated that unless I did, he also would retire from my defence.

The effect of this communication was terribly depressing. It seemed from what Mr. Royall said that I had become such an object of opprobrium, that not only did my personal friends turn from me, but even the lawyers were unwilling to appear in my behalf professionally. And it also seemed that I would have to contend against treasurer Mayo's personal popularity, and his relations with his other lawyers of the Richmond bar; strange odds, indeed, they were to be countered by a citizen in a contest in a court of justice! And added to this had to contemplate the fact that the influence of the Governor, and the force of public sentiment were inexorably against me. Such circumstances were very formidable enough to crush a much more powerful man than I was!

I expressed my readiness to make an effort, in accordance with Mr. Royall's advice, to get counsel from a distance; and at once wrote a letter to Maj. W. T. Sutherlin, of Danville, informing him of the exigency in which I stood, and entreating him, as a friend, to send counsel to my assistance from the bar of my native county. This letter was submitted to Mr. Royall, who examined and approved it, and took it himself to have it mailed for me. As he was leaving me for the purpose of having it mailed, I wrote and handed him for transmission a telegram to Maj. Sutherlin, informing him that such a letter was *en route* to him. A conversation was held between Mr. Royall and myself on this occasion in regard to the facts in my case. All that was said had reference only to securing proper counsel to assist him in my defence; and he left me immediately after receiving from my hands the letter and telegram to Maj. Sutherlin.

In this letter to Maj. Sutherlin, I expressly stated that the difficulty in procuring counsel from the Richmond bar to defend me, was by reason of the fact that my defence would require my counsel to assail treasurer Mayo; meaning that his testimony, as given at my preliminary examination before the police justice, was false, and would have to be impeached. Mr. Royall read that letter, and approved it.

In consequence of the postal arrangements my letter could not reach Danville before the next (Saturday) afternoon, and it happened, unfortunately, that Maj. Sutherlin was absent from home when it did arrive, so that he did not receive either it or my telegram until his return, which was on Saturday night, I believe. On Sunday morning he wrote me a hurried note in response which was put into my hands on Monday morning about 9 o'clock. In this note he informed me that he had enclosed my letter to Col. T. S. Flournoy requesting him to call, and to ask him, and also to ask Col. E. Barksdale to do the same, and if they could not do so, to ask Judge Marshall to do so. He added, in conclusion, as follows: "I take it for granted that if you are not prepared with counsel, you will get a continuance, and you can get ready for trial." And I considered this a very reasonable opinion for him to entertain, for in that part of Virginia courts of justice have always allowed an accused person at least an opportunity to prepare his defence. I have omitted to state, in its regular order of time, that, on Sunday afternoon, I received a message to Mr. Royall to come and see me, and he did so. As I had received nothing from Maj. Sutherlin, I wanted to consult Mr. Royall further about procuring counsel to assist him in my defence. In the course of this conference, at the time, Mr. Royall mentioned that Charles L. Mosby, Esq., of Lynchburg,

happened then to be in Richmond, and proposed to try and secure his assistance. To this I very gladly agreed, but Mr. Royall changed his mind and said that, for certain reasons (which he did not tell me), he would rather not ask Mr. Mosby.

In this interview with Mr. Royall (the last I ever held with that gentleman until after my trial was over) I was painfully perplexed by the difficulties of my situation. There I was, sick in body (I was ill with yellow jaundice, and my strength was then, and remained until some time after my trial, as yellow as a Chinaman), locked up in jail, without a friend in reach on whom I could rely; and in that condition I had to meet a prosecution instigated and backed up by the government of the commonwealth, and other leading officers of the state government; public sentiment truculently wrought up against me by the one-sided versions of my case which had been circulated; my trial fixed for the next morning, and I without counsel and with no preparation for defence! It was enough, I think, to fill a man with dismay.

In the course of this interview with Mr. Royall, having despaired of a response to my letter to Major Sutherlin, I thought of Judge Marshall, who had formerly expressed a warm personal friendship for me, and at my request Mr. Royall went to find him for me. Shortly after sunset that evening Judge Marshall came, in response to my request through Mr. Royall. I informed him of my situation and asked him to undertake my defence. He expressed a willingness to do so, but said he had been retained in an important civil suit in Judge Welford's court which was fixed for hearing at the same hour as my trial in the hustings court, and that therefore he could not appear for me unless the time for my trial could be changed. He promised, however, that if nothing better could be done, he would attend at the hustings court at the hour fixed for my trial and endeavor to get a continuance for me, so that I could make arrangements for my defence. With this understanding he left me without any conversation whatever as to the facts of the case.

That night (Sunday), I passed in the most wretched anxiety. Of course I saw that I had no earthly chance, except through a continuance of the case until the next term of the court. But thinking that surely the court would not refuse a continuance, under the circumstances, I tried to quiet my anxieties with the reflection that if I could not get counsel to defend me, I would make my own defence in person, in spite of the disadvantages of not being a lawyer, and of being in feeble health, harassed in mind, and locked up in prison. Had a continuance been allowed me, and I been permitted to defend myself, I would have been acquitted.

Next morning (Monday), I received the hasty note from Maj. Sutherlin, in which I have alluded above, and, in less than three hours afterwards, I was taken to the court-house for trial. As yet, I had heard nothing from Col. Flournoy or Col. Barksdale, and could not even learn whether they had reached the city.

Let it be remembered, here, that up to the very moment I entered the court-room for trial, I had been unable to secure counsel to defend me; though I had made every effort in my power to do so. Whilst, on the other hand, you, Mr. Wise, the attorney for the commonwealth, had had every opportunity, and had zealously prepared for prosecution; in which preparation, I have since been told, you had had the assistance of some of the "basement officers," and particularly such assistance as so astute a lawyer as treasurer Mayo could render, prompted as he was by personal interest to secure my conviction. To force me to trial at that term of the court, under such circumstances, was a very grievous injustice. It was the prolific starting-point in a series of wrongs such as no citizen ever before suffered at the hands of judicial power in Virginia; and I pray Heaven none may ever suffer such again.

The honorable judge, by reason of whose summary rulings my conviction was made possible, has since been suddenly stricken down by death. Mindful of the maxim, "*De mortuis nil nisi bonum*," I would willingly omit all mention of him, could I do so in telling my story. But as this is not possible, I respectfully submit that the pagan philosophy which inspired the adage, and the Christian benevolence which has adopted it, would both recommend JUSTICE to the living as no less a sacred duty than CHARITY to the dead. Besides, the maxim is, as originally written: "*De mortuis nil nisi bonum ac verum*."

I say, then, and the sequel will show, that by reason of the exercise of the power of the court against me, in my utter helplessness, I was deprived of the essence, if not the form, of A RIGHT intended to be guaranteed to the humblest citizen by the organic law of the land. The American Constitution (Amendment vi,) declares that: "In all criminal prosecutions the accused shall enjoy the right * * * * * to have the assistance of counsel for his defence." But the court, in my case, for his own personal convenience in getting through the docket for the term, though allowing me the appearance of a defence by counsel yet, in reality, by forcing me to trial without sufficient opportunity to put that counsel in possession of the facts of the case, deprived me of the benefit of such assistance as was contemplated by this provision of the constitution.

In a published letter in regard to my case long after my trial, the honorable judge referred to me as one who *was his friend*. The reference was to relations between us which existed long before his elevation to the bench; relations of a private nature of which the general public had no knowledge and of which I have no purpose to speak now. With no bitterness in my heart I trust I may be permitted to remember that it was Cleon, who, when elevated to public office, denounced his friends, pretending to fear that their influence might improperly affect his judgment in public matters: I need not quote the comment of Plutarch on Cleon's conduct, since the name of Cleon is synonymous with demagogue in Grecian history. But it was Aristides, surnamed THE JUST, whose practice it was, when Archon of Athens, "not endeavoring to oblige his friends at the expense of justice, yet always ready to do them a service when consistent with it." Truly, it would not have been "at the expense of justice," had I been allowed to remain in jail thirty days longer, in my helpless condition, in order that time might be afforded for preparing my defence! And yet that was the only "service" I desired at the hands of my "friend," the court.

I proceed now to my case in court: On entering the court-room, in the custody of a deputy-sergeant, I was met by Judge Marshall, who informed me that Mr. Flournoy and Col. Barksdale had both arrived, and added that he presumed I could now get along without his assistance, and so left me. Presently I saw Mr. Flournoy and Col. Barksdale entering the court-room. They came to me, and told me that, in compliance with Maj. Sutherlin's request, they had come, in great haste, to undertake my defence, but that a previous engagement at Lynchburg would compel them to leave Richmond at once, and they could not appear for me unless my case should be continued until the next term of the court. They said, however, that of course the court would grant a continuance in view of the circumstances. This interview with Cols. Flournoy and Barksdale, did not last as long as five minutes; it took place in a corner of the open court-room which was already partially crowded; and I have stated the entire substance of the conversation. *But that interview comprised everything whatever in the nature of a consultation, or conference, of any kind that ever passed between them and myself, or either of them and myself, until my trial was all over.*

Just as this brief conversation between Cols. Flournoy and Barksdale, and

myself was closing, Mr. Royall came up and joined us. His modest opinion of his own abilities and his unwillingness to encounter single-handed the fierce array of influences which had combined for my prosecution, had impelled him to tell me, (as I have stated) that he would not appear for my defence unless I could get some older lawyer to take the lead in the case; but after the appearance of Col. Flournoy and Barksdale, I took it for granted that he would assist them; though nothing was said on the subject. As Mr. Royall came up, however, before a conversation took place, the court was opened and I took my seat at the bar. Mr. Royall rose and informed the court that I was not prepared for trial in consequence of the difficulties I had encountered in securing counsel to defend me. He stated the facts in regard to these difficulties pretty much as I have here related them, though not so explicitly; and then he asked the court to continue the case until the next term. The court declined to continue the case and said the trial must go on. Mr. Royall again arose and pleaded for a continuance on the further ground that I was still unprovided with counsel, for, although Col. Flournoy and Barksdale were willing to appear for me, yet their engagements in another case were such as to compel them to leave Richmond at once, and unless my case was continued they, nor either of them, could not appear for my defence. The court, with considerable asperity, replied, in effect, that he (Mr. Royall) was counsel enough for the defence and the trial must go on. Mr. Royall arose again and was proceeding to urge reasons for a continuance, but the court stopped him and addressed him in words to the following effect: "Mr. Royall, if I allow cases to be continued in this court, the docket will soon become so full that I shall not be able to get through with it from one term to another. It is a rule of this court not to continue cases, and the trial must go on." Mr. Royall, however, continued to plead for a continuance, urging as further reasons that while an immediate trial would be a great hardship upon me, being forced to do it without preparation and the assistance of counsel, although I had used my best efforts to be prepared, yet on the other hand, a continuance of the case until the next term of the court would be but proper and would not militate against public justice, because I would have to remain in jail during the *interim*, and would be suffering the hardships of imprisonment during all the thirty days of delay asked for. And, finally, Mr. Royall informed the court that if the trial must go on at that term of the court he (Mr. Royall) had nothing further to say in the case and would retire from it and leave it in the hands of the court, without any counsel for the defence at all. Upon this the court postponed the further consideration of the case until the next morning (Tuesday); and thereupon I was forthwith reconveyed to jail and locked up, and I neither saw nor heard anything from Col. Flournoy or Col. Barksdale or Mr. Royall, until, as presently stated, I was taken back to the court-room next day for trial. Locked up in jail it was out of my power to communicate with them, and I was left to my own reflections, surmises and suppositions without any information whatever as to their plans or purposes. I did not know, indeed, whether to still continue to consider them as my counsel or not.

Next morning (Tuesday), I was again conveyed from the jail to the court-room for trial, and my case being immediately called, upon my appearance, Mr. Royall briefly renewed his appeal to the court for a continuance and repeated his declaration of purpose to retire from my defence if the court refused to grant a continuance. Col. Flournoy and Col. Barksdale were also present in the courtroom and the former followed Mr. Royall, and pleaded with the court for a continuance. But I need not dwell upon the efforts made to induce the court to grant me the opportunity to get ready for trial. They were all in vain. The court utterly refused to grant a continuance, but finally agreed to postpone calling

the case till a later day in the term ; and announced that it would be called on the following Monday week—a delay of about twelve days. And thereupon I was again re-conveyed to jail and locked up.

On enquiring afterwards, I learned that Cols. Flournoy and Barksdale both left the city that same afternoon. I did not see them any more. I was locked up in jail, and deprived of all opportunity to do anything in my own behalf. The increased anxiety of mind which these circumstances gave me, brought a relapse of the disease from which I was partially recovering, and I was again prostrated in bed, from a renewed attack of the jaundice, and remained under medical treatment in the jail. During this time, I never saw nor heard anything from Mr. Royall, and did not know whether Cols. Flournoy and Barksdale would return to assist my defence or not. But I received the following letter from Col. Flournoy :

“ DANVILLE, March 13, 1874.

L. WM. D. COLEMAN,

“ Dear Sir:—I intended to call and see you before leaving Richmond, but was unable to do so. I, however, had a full conference with Mr. Royall and Gen. Johnson about your case, and was satisfied that an earnest and vigorous defence will result in your acquittal. In your letter to Major Sutherlin, which he enclosed to me, you said you would be able to raise \$200 fee for your defence, if I would come and aid in your defence. I am sure that you can do so among your friends in Richmond, and I hope you will do so, and have that amount ready to pay me when I come on to your trial. The balance of my fee I will look to another quarter for, but you must pay the above amount, as I cannot come to Richmond and, at my own expense of time and money, engage in your defence. If you will arrange to pay me \$200, and your friend Major Sutherlin will arrange the balance of my fee, I will be down and make the best defence for you I am capable of, and I think we will procure your acquittal. I go on Monday to Lynchburg, to attend the U. S. Court, and shall be there all the week. Write me there, care of Norvell House, and let me know whether you can raise me the \$200 by the day of your trial. If you can, I will certainly be present.”

Yours very respectfully,

THOS. S. FLOURNOY.

And this letter and reply, on the subject of paying counsel's fees, was the only communication I ever had with Col. Flournoy about my case. And I had no communication at all with Col. Barksdale.*

During the interval of this postponement, I never saw Mr. Royall at all. I was locked up in jail, and could not go to him, and he did not come to me. Nor did I have any communication with him except that, on Friday, three days before my trial was to begin, he wrote me a note, making enquiries about a certain transaction of the sinking fund with Messrs. Isaacs, Taylor & Williams, to which I sent him an immediate reply. And this was the only communication I had with him.

One day during this interval Mr. E. Carrington Cabell visited the jail to see a prisoner who was a client of his, and while he was there, this prisoner came to me and solicited me to ask Mr. Cabell to assist in my defence. Mr. Cabell promised to do so, and accepted a small sum (all the money I then had), on ac-

NOTE.—*After my release from prison and location in Danville, in order to ascertain my pecuniary condition, with a view to discharge it as soon as possible, I addressed a note to Col. Flournoy inquiring what amount he had received on my account, and from whom? He sent me the following reply, in which, however, he does not include the sum of \$25, which I, myself, caused to be deposited to credit in the Planters' National Bank, at Richmond, and sent him the certificate of deposit:

“ DANVILLE, April 6th, 1878.

L. WM. D. COLEMAN.

“ Dear Sir:—I received from Major W. T. Sutherlin \$150, in part fee of \$300, promised me as a fee for my defence at your trial in the hustings court at Richmond, at March term 1874. No one else has paid me anything on your account. Some one may have aided Maj. S. in making the amount he paid me out, but I do not know that anyone did. I think that he expected some of your friends to raise the balance of the \$300 promised, but no one ever did.

Very respectfully,

THOS. S. FLOURNOY.”

With like purpose I made similar enquiries of Col. Barksdale, and he informed me that he had not received a cent from any one. But I have performed a considerable amount of clerical labor for him, in law cases, which I have asked him to accept on account of his fee in my case.

count of his fee ; but he did not appear for me at my trial, and it is not necessary to make any further reference to the matter.

I remained locked up in jail, and could do nothing but wait ; and my condition of body and mind was such that I was utterly incompetent to act judiciously for myself. No friend was kind enough to offer to assist me. Debilitated in body and often racked with pain and prostrated upon my bed, I was well-nigh as helpless as a child.

On Monday, March 23rd, I was taken from the jail to the court-room for trial. Cols. Flournoy and Barksdale and Mr. Royall were present, but they neither sought, nor afforded me, the opportunity to give them any information about the facts in the case ; though they whispered to me, as I sat there, repeated assurances of my certain acquittal. There were two indictments against me, one for the alleged larceny and embezzlement of public funds, and the other for the alleged forgery of a public record. Both of these indictments had been published *in extenso* in the city papers, as I afterwards ascertained, and they were so worded that their publication could not fail to leave a most exaggerated impression, and thereby further inflame the public feeling against me. On reading these indictments, now, it would be wholly unaccountable to me how any grand jury in Virginia could have been induced to return them " true bills," unless upon evidence more atrociously false than I had conceived to be possible ; I say it would be unaccountable to me, except that I have since heard you, Mr. Wise, admit that you personally attended the deliberations of that grand jury, and your zeal to secure my conviction, no doubt you used your eloquent persuasives to induce them to do it. You had their ears all to yourself for the purposes of the prosecution ; and I, the accused, was not permitted to be represented or to be heard in that—at least the law intended it to be—SECRET inquisition of the grand jury of inquest.

Of the two indictments against me, you, Mr. Wise, selected that which you considered strongest ; that is, the one on which you thought you stood the best chance to secure my conviction. I say that you so selected, because that would have been natural in a prosecuting attorney of your skill and experience, and also because on a subsequent occasion—in the Crittenden trial—you avowedly did so. And had I been acquitted on the indictment on which I was tried, you would have entered *nolle prosequi* as to the other indictment just as you afterwards did in the case mentioned. At a former page hereinbefore (page 3), I have submitted the full text of the indictment selected as strongest, and on which I was tried, and I beg that it be referred to in this connection.

When arraigned upon this indictment, and during the whole period of my trial I was, physically and mentally, incapable to personally make defence. You saw me, Mr. Wise, and you know yourself that at that time I was yellow with jaundice. Indeed, it is my belief that I should have fallen at times in the court-room, during the trial, from physical weakness, but for repeated stimulation by ardent spirits. Such was my condition that, in my opinion, had the indictment been for burning the capitol, or murdering the governor, I should have been convicted all the same, so far as I was personally capable of making my defence.

The whole matter of my defence was therefore devolved upon the lawyers who appeared as my counsel, but who, as I have shown, were entirely ignorant of the facts in the case. At no time did I interfere by enquiry or suggestion. I sat like one in a dreamy stupor, dazed and bewildered. What the plans of my counsel were I was at no time informed, but the sequel showed, as I will presently prove that they intended that *I should be convicted by the jury and then perhaps escape the penalty of the law through a favorable construction of a legal technicality by the appellate court.* Had I known that this was their " plan " I would

ever have consented to it; for although it might have saved me from a degrading imprisonment it would have left the moral stain of guilt upon me as fully as if I had pleaded guilty. But you know yourself, Mr. Wise, that the only question seriously contested by my counsel was not whether I had committed the fact charged in the indictment, but it was whether the fact charged in the indictment was an offence against the law; not whether I had made an erasure in the warrant book of the sinking fund with intent to defraud, but only whether the said warrant book was a public record or not? And I have since heard that you, Mr. Wise, have expressed the opinion, that *if I had been properly defended I would not have been convicted*.

In a published response to certain enquiries propounded by Gov. Kemper, the judge who presided at my trial declared that I would not have been convicted in the absence of Mayo's testimony." Whatsoever it may have been attributable to, the fact is indisputable that my counsel did not pursue the line of defence which would have secured my acquittal by exposing the atrocious falsehood of treasurer Mayo's testimony—as they should have done.

But I have said that I will *prove* that their "plan of defence" was that I could be convicted by the jury and then perhaps escape the penalty of the law through a favorable construction of a legal technicality by the appellate court. I propose now to prove this by Mr. Royall, and he so testifies in a letter which he wrote to me dated March 27th, 1874, being the day after my trial was concluded. It was as follows:

"DEAR COLEMAN:—You must make arrangements at once for paying for copying the record and printing it. This will cost certainly \$50, perhaps \$75. Keep your spirits up; we anticipate a verdict against you all along, but we are as confident of a reversal of the judgment now as we ever were. I hear rumors that you have been threatening in case of conviction to implicate others. Let me implore you to keep your mouth sealed with more care *now* than you have ever done. You can do yourself no sort of good and may do yourself incalculable harm. Attend now to this. Keep your mouth shut.

Yours, &c.,

WM. L. ROYALL."

In point of fact, I had made no such "threat." After the verdict of the jury had been announced I had, indeed, declared that that verdict was formed upon testimony which was *false*. I then did say that treasurer Mayo had testified falsely and that auditor Rogers had testified falsely, and that the testimony of other witnesses was false, and that sooner or later I would prove this to the world. But I had said this only to my aged father and to the jailor as he walked with me from the court-room after my trial was over, conveying me back to jail. And I say so now.

It is however to Mr. Royall's declaration that "we [*i. e.* my counsel] *anticipated a verdict against you all along*" that I wish to direct attention particularly in this connection. If he had expressly said so, he could hardly have testified more clearly to the truth of that part of my assertion that their "plan of defence" was *that I should be convicted by the jury*; and when he adds that "we are as confident of a reversal of the verdict now as we ever were," it is as much as to say that in conducting my "defence" they had expected that, though convicted by the jury, I should escape the penalty of the law through a favorable construction of the statute by the appellate court.

My counsel, it seems, were relying upon the "legal strategem" of showing that the warrant book of the sinking fund was *not* a public record. In their arguments before the supreme court of appeals I presume they exhausted the meaning of the law books to establish this point. It would be out of place and waste for me to revamp their arguments, or to present new ones, were I able to do so. From the evidence before them the supreme court of appeals have decided that the warrant book of the sinking fund is a public record. But if I prove that

the evidence before the supreme court of appeals on which they formed their said opinion *was false*, I think I shall thereby show that that august tribunal was misled and deceived as to the matters of fact on which they formed their said opinion, and that consequently that opinion is erroneous. And this is exactly what I shall proceed to do.

The evidence upon this question, as submitted to the supreme court of appeals, is embraced in Judge Guigon's certificate, from the printed copy of which in the record of the case, I quote as follows :

" And the said second auditor testified that he kept the said warrant book as a record of amount of bonds purchased by the sinking fund, and as a record of the receipts and disbursements of his office as to the sinking fund, as required by § 22 of chap. 42, code of 1873 ; but was not directed by the commissioners of the sinking fund, as a board, to keep such book ; it was known to said commissioners that such a book was kept ; that said warrant book was to the amounts for which warrants were drawn, added up regularly at the end of each month and compared with the amounts paid out, as shown by the books of the treasurer, on account of the sinking fund, to ascertain if they tallied, and to make settlements with the treasurer, on account of the sinking fund, and from said warrant book there was each year made out by the second auditor, a statement of the amount (the face value) of the bonds on hand in the sinking fund, from which statement the second auditor and the commissioners of the sinking fund made out their annual report to the legislature of the amount of said bonds ; such warrant book being the only official record or memorandum from which such amount could be ascertained."

Now, this testimony of the second auditor purports to be a full and correct statement of the character of the warrant book, the authority by which it was kept, and the purposes for which, as a record, it was used. As such it was certified to the supreme court of appeals, by Judge Guigon ; as such it was duly received and considered by the supreme court of appeals ; and upon it as testimony the august tribunal formed their opinion and made up their decision as to whether the said warrant book was a public record or not. Apart from its reference to " § 22 of chap. 42, code of 1873," as the provision of law under which the said warrant book was kept, this testimony of the second auditor sets forth three distinct propositions in regard to the said warrant book and asserts that the same are true as matters of fact. Namely, First : " That said warrant book was, as to the amounts for which warrants were drawn, added up regularly at the end of each month and compared with the amounts paid out, as shown by the books of the treasurer, on account of the sinking fund, to ascertain if they tallied, and to make settlements with the treasurer on the account of the sinking fund." Second : " And from said warrant book there was each year made out by the second auditor a statement of the amount (the face value) of the bonds on hand in the sinking fund, from which statement the second auditor and the commissioners of the sinking fund made out their annual report to the legislature of the amount of said bonds." And third, " Such warrant book being the only official record or memorandum from which such amounts could be ascertained."

Upon these three points the fate of my case was decided in the supreme court of appeals. Relying upon a " reversal of the verdict " by the appellate court, my counsel made no real defence in the *nisi prius* court, as to the facts charged in the indictment. And upon the testimony as to these three points of fact the appellate court decided that the said warrant book is a public record, and thus the " plan of defence " attempted by my counsel was defeated. And yet all three of these propositions, though sworn by the second auditor, under the solemn sanctity of his oath, to be matters of fact, *were in reality false ; and I shall now prove to you that they were false..*

As to the first : Please take the warrant book itself—the " public record " alleged to be forged—examine its pages and see for yourself whether " said warrant book was, as to the amounts for which warrants were drawn, added up

regularly at the end of each month, and compared with the amounts paid out, as shown by the books of the treasurer, on account of the sinking fund, to ascertain they tallied, and to make settlements with the treasurer on the account of the sinking fund?"

Unless the entries in that book have been tampered with since it was before the court at my trial, and copied by the clerk of the hustings court (for I speak according to the certified copy of it as printed in the record of the case, and my own knowledge that that copy is correct), you will find that the first entry in that book is of date, "August 2nd, 1871." The interval between that date and my trial comprised a period of nearly thirty months. During the first nine of these thirty months, that is to say, until the 1st of May, 1872, comprising nearly one-third of the entire period, not only was "the said warrant book, as to the amounts for which warrants were drawn" NOT "added up regularly at the end of each month," but, in fact, *it was not added up at all, during that entire period.* The first entry, after the expiration of the said nine months, that is to say, on the 1st of May, 1872, is as follows:

"May 1.—To balance from April, \$546.44,"

But the merest tyro in arithmetic by adding up the "amounts for which warrants were drawn" will discover that *this "balance" is a false balance.* The real truth about it is that Mr. Morrison, the clerk who kept this warrant book, got the sinking fund account confused by muddling it up with some items of the transactions of the Board of Public Works and in order to overcome the discrepancy, thereby created, between the said warrant book and the treasurer's account, he *falsified* this balance and entered it accordingly.

In the impartial judgment of an enlightened public, I am confident that an account with which such things as this have been done possesses little value as a public record." And if you will further examine the pages of this warrant book, you will find that, in addition to the nine months I have specified, there are at least two other months, as to which this testimony of the second auditor was absolutely and essentially untruthful. And I think that these physical facts conclusively prove that the first proposition of the second auditor stated in his testimony as a matter of fact, is in reality *false*.

I am quite willing to concede that it does not really matter whether this warrant book was regularly added up, as the second auditor swore that it was, or not. But you will please observe that I am proving the testimony of the second auditor false as to minor points even; presently I will also prove it false as to the gravest facts in the matters of fact on which the supreme court of appeals affirmed the judgment of the *nisi prius* court, and sent me to prison for four long and weary years.

The second proposition in his testimony stated by the second auditor as a matter of fact is as follows, to wit: "And from said warrant book there was each month made out by the second auditor a statement of the amount (the face value) of the bonds on hand in the sinking fund, from which statement the second auditor and the commissioners of the sinking fund made out their annual report to the legislature of the amount of said bonds." This is unquestionably the real material point in the testimony of the second auditor which controlled the conclusion of the supreme court of appeals in deciding that the warrant book was a public record. And yet I shall now instantly prove that this vital part of the second auditor's testimony is, like the minor part of it, atrociously FALSE.

I ask you now, Mr. Wise, to take in hand all of the second auditor's reports for each of the fiscal years, ending September 30th, 1871, 1872 and 1873, respectively. These reports comprise the entire period between the organization of

the commissioners of the sinking fund, under the provisions of the "funding bill" and the date of my trial. Examine them carefully from one end to the other and you will not find one word or syllable touching this sinking fund, or in a manner indicating its existence in the first two, and none whatever, in the last. The nature of an "annual report to the legislature," such as it is pretended in the testimony of the second auditor was made out by him from "a statement of amount (the face value) of the bonds on hand in the sinking fund;" which statement it is further pretended, "was each year made out by the second auditor." And the only reference to the existence of the sinking fund at all in any of the reports is a brief mention, in the last one, of what he says, "will appear by report of the commissioners of the sinking fund." And even this brief mention is based upon the memorandum prepared by me, at his request, as I have heretofore related. But in reproducing the information thus obtained from me, he has blundered into a conspicuous inexactness; he stating that "it will appear by the report of the commissioners of the sinking fund, that they have purchased *in the last fiscal year*, stock of the state amounting to \$237,930.64," whereas the memorandum I gave him clearly stated, as was the fact, that that was the amount they had purchased from the date of their organization, August 2nd, 1871, to the close of the fiscal year ending September 30th, 1873, a period of *more than two fiscal years*; for each of which years, moreover, the reports of the commissioners of the sinking fund, *compiled by me*, showed what amounts had been purchased, and *also what amounts had been added to the sinking fund from transfers from the board of public works*. If you will also examine the reports of the commissioners of the sinking fund, to which my name is signed as secretary, you will find this true.

I now respectfully submit that I have proven from this examination of the reports of the second auditor, that is to say, by evidence in the nature of *supreme and incontrovertible testimony of physical facts*, THAT IT IS NOT TRUE, *as pretended in the testimony of the second auditor, that he had made an annual report to the legislature showing the amount of bonds purchased for the sinking fund, as he implies he was required to do by section 22 of chapter 42 of the constitution of 1873*. By the same irrefragible proof I have also shown, conclusively, that he *had never made any "report to the legislature" at all*, annually or otherwise, to the affairs of the sinking fund up to the date of his said testimony. If the law required him to make such annual reports, as he alleges that it did, nothing can be more obvious than, that in giving his testimony at my trial, his self-interest was prompting him to make it appear that he had discharged *his* duty under the law, whether the fact was so or not.

But until a pyramid can be constructed by putting up the apex first, it will remain impossible for it to be true, in the face of the proofs which this evidence in the nature of physical facts presents to the contrary, that "from said warrant book there was each year made out by the second auditor, a statement of amount (the face value) of the bonds on hand in the sinking fund, from which statement the second auditor" made out *his* "annual report to the legislature" of the amount of said bonds."

But, in this "testimony" of the second auditor, it is also pretended that from the statement pretended to have been made out each year by the second auditor from said warrant book "the commissioners of the sinking fund made out *their* annual report to the legislature." Now, you, Mr. Wise, know, from evidence adduced at my trial by the commonwealth (and the same can be otherwise abundantly proven) that every report of the commissioners of the sinking fund up to the time of my trial was made out by myself alone, as their secretary, and was never seen nor in any manner supervised until entirely complete and ready

transmission to the governor to be laid before the legislature. This testimony, indeed, elicited, I believe, with the intent to suggest injurious suspicions against me in the preparation of these reports; but it being presently ascertained that the said reports were absolutely accurate in every particular, the effort to suggest suspicions against me on account of their preparation was abandoned. Hence now, therefore, it is known that I alone, to the exclusion of every other person, prepared and was privy to the preparation of, the reports of the commissioners of the sinking fund, I respectfully submit that it is not possible that the second auditor, or any other person on earth except myself, is competent to testify to the sources from which I obtained the necessary information for the compilation of said reports; and I have hereinbefore fully explained the manner in which I did compile them, from which it has been seen that I did not make them out from any "statement made out by the second auditor" each year, nor from any statement made out by him at all, nor from any statement made out by any other person "from said warrant book;" and that, in fact, I did not use the said warrant book as an authentic source of information in making out the said reports, at all.

Thus you see, Mr. Wise, the evidence in the nature of physical facts—a class of evidence far above the fallibility of human testimony—conclusively shows a negative to the second of the propositions in the evidence of the second auditor, stated by him as a matter of fact; and proves beyond the shadow of a doubt that it is *not true* that "from said warrant book there was each year made out by the second auditor a statement of the amount (the face value) of the bonds on hand of the sinking fund, from which statement the second auditor and the commissioners of the sinking fund made out their annual report to the legislature of the amount of said bonds."

The third of the propositions in the testimony of the second auditor, stated by him as a matter of fact, was, no doubt, of equal importance with the second of the propositions in influencing the opinion of the supreme court of appeals in deciding that the said warrant book was a public record. That proposition is as follows, to wit: "Such warrant book being the only official record or memorandum from which such amount could be ascertained." Of this proposition, precluded by the second auditor to be a matter of fact in his testimony, I shall now briefly but very effectually dispose by instantly *proving that it is false*.

If you, Mr. Wise, will go to the office of the second auditor you will find there, no doubt carefully filed away, *the original orders* from the commissioners of the sinking fund, drawn and signed by me as their secretary, authorizing the second auditor to issue his warrant upon the treasurer for the payment of money on account of the purchase of bonds for the sinking fund. In each of these orders in the name of the seller of the bonds, the amount of the bonds (the face value) and the amount of money to be paid for them are specifically stated. And though the second auditor might be able to produce "such warrant books" as the one alleged to be forged, in a pile as large as the Washington monument, yet, unless he could produce *these orders* he would not be able to show even the shadow of authority for his act in issuing his warrants for the payment of money out of the treasury on account of the purchase of bonds for the sinking fund; nor to produce *any* authentic "official record or memorandum" from which the amount of bonds so purchased could be ascertained; for a *list* of these orders (such as the said "warrant book of the sinking fund" in reality was), would not be an *official record* of the acts of the commissioners of the sinking fund, unless authenticated by their signatures, or that of their secretary for them.

On the other hand, however, if this "warrant book of the sinking fund" should be lost or destroyed or stolen, it would be a very easy matter for the sec-

ond auditor or one of his clerks to take these *original orders* and from them prepare anew this "warrant book of the sinking fund as kept in the second auditor's office," and this would be a mere matter of clerical labor which could be lawfully done at any time; and when done would unquestionably possess every element of authenticity possessed by the warrant book—the "public record" alleged to be forged. And let us hope it would possess a smaller number of clerical inaccuracies than that prepared by Mr. Morrison and alleged to be the subject of forgery at my trial.

But if one of these *original orders* should be stolen, lost, or destroyed, although the second auditor might perhaps be able to write a new one just like the one so lost, destroyed or stolen, by referring to the memorandum of it entered in the warrant book of the sinking fund, as kept in his office, yet if he ventured to do so, I think any jury would be pretty certain to find him guilty of forgery if brought to trial, and prosecuted with one-hundredth part of the zeal you displayed in prosecuting me, Mr. Wise.

Again: If you, Mr. Wise, will go to the treasury office, you will find carefully filed away there, all the *original warrants* from the second auditor authorizing the treasurer to pay out money on account of the purchase of bonds for the sinking fund. In each of these *original warrants* (issued by the second auditor in conformity to the *orders* of the commissioners of the sinking fund) the name of the seller of the bonds, the amount of the bonds purchased (the face value), and the amount of money to be paid for them are specifically stated, and each of the warrants is duly signed by the second auditor, and attested by one of his clerks. These are the treasurer's *vouchers* to show his authority for the disbursement of the money in his hands belonging to the sinking fund. If one of these *original warrants* should be stolen, lost or destroyed, the treasurer could easily prepare a new one exactly like the one stolen, lost or destroyed, by reference to the *original orders* from the commissioners of the sinking fund filed in the second auditor's office; or he could do so by referring to the entry in the memorandum in the warrant book of the sinking fund, as kept in the second auditor's office, whether that warrant book was the original one, or another which the second auditor had written up in place of the original one lost, stolen or destroyed. But the treasurer could not do this lawfully for it would be "forging a public record." If, however, the warrant book of the sinking fund as kept in the second auditor's office should be lost, stolen or destroyed, it could be readily written up anew from these *original warrants filed in the treasury office*, and so do it would be entirely legal and proper; and this warrant book so reproduced would be every way as authentic as the original one which had been stolen or destroyed.

I have thus made it as clear as the noon-day sun, *by the testimony of physical facts* that the third of the propositions stated by the second auditor in his testimony as a matter of fact is in reality FALSE—such warrant book, I have proved was NOT "the only official record or memorandum" from which the amount (the face value) of the bonds purchased for the sinking fund could be ascertained; but, to the contrary, if the said warrant book were to be stolen or destroyed, the amount of bonds purchased for the sinking fund (the face value) could be readily and accurately ascertained *from the original orders of the commissioners of the sinking fund filed in the second auditor's office*; and if these original orders, as well as the said warrant book were to be stolen or destroyed, then *from the original warrants signed by the second auditor and attested by one of his clerks and filed in the treasury office as the treasurer's vouchers* the same information could be readily and accurately ascertained. And, in fact, the amount of bonds purchased for the sinking fund cannot be authentically ascertained at all from

warrant book of the sinking fund, as kept in the second auditor's office, unless the said warrant book be verified by comparison with the said original orders and warrants.

Thus you see, Mr. Wise, the supreme court of appeals, in affirming the judgment and sentence of the court under which I have been made to suffer a degrading imprisonment, *were misled and deceived as to the matters of fact*—by the testimony of the second auditor, as certified to them by the judge of the *nisi prius* court; for by the highest class of evidence known in jurisprudence—the supreme and incontrovertible testimony of physical facts—I HAVE PROVEN that that testimony, thus certified as aforesaid, was *absolutely and essentially false* both as to the minor matters of detail and the graver particulars of which it purported to be a true statement.

And here I wish to reiterate what I declared in the beginning; namely, that what I say it is my purpose, as far as human nature will permit me, to speak with malice towards none—with charity for all.” And in making this exposure of the untruthfulness of the second auditor's testimony my object is to denounce the injustice which has been done me under the forms of the law, and not revengefully to arraign the second auditor as a perjured witness whose motive in false-swearing was to make it appear that he had performed the duties required of him by law. In laying the proofs of his false swearing before you, Mr. Wise, I do so with no expectation that you, as the attorney for the commonwealth, will prosecute him for perjury, for I am aware of the statute which limits a prosecution for perjury to the period of three years after its perpetration; and I was not in prison longer than three years after the perjury was committed by means of which I was sent to prison. “With malice towards none—with charity for all” I harbor no design of revenge; but it is not a pleasant reflection that it was by means of such testimony as this that I was convicted of a crime which I never committed, all my earthly prospects ruined, and all the sweetness taken out of life for me.

In this connection, I wish to relate an episode, which, though, in point of time, of a later date can be most appropriately related here. It is as follows: Nearly a year after my incarceration I was at last permitted to see a copy of the opinion of the supreme court of appeals, affirming the judgment of the *nisi prius* court in my case. It has since been printed in Grattan's Reports, and I beg you, Mr. Wise, to refer to it in this connection. On reading it, in my cell, I discovered very speedily that the supreme court of appeals had been misled and deceived by the false testimony of the second auditor, as to the matters of fact, as the same was certified to them by the judge of the *nisi prius* court. But I was utterly amazed on reading a certain passage in the text of that opinion to which I now wish to call your attention. The points (gathered from the testimony of the second auditor, to which the court refer) which purport to define the character of the warrant book of the sinking fund and designate the purposes for which it was alleged to have been used are recapitulated, and thereupon the court cite learned authorities and declare their opinion that the said warrant book is “a public record.” But furthermore, the supreme court of appeals put themselves upon the record as follows, to wit:

And we are fortified in this view, by the fact known to us judicially, that the second auditor, who, as we have seen was a member of both boards, has, since the creation of the new sinking fund, continued to keep in his office the record of the transactions in relation to the sinking fund, in the 22nd section of chapter 42, code of 1873, precisely as he did before the new sinking fund was established; and has annually reported the same to the legislature, as a portion of the transactions of his office, without any intimation to him on the part of that body that he was acting without authority, or any amendment or repeal of the law under which he was acting.”

I was utterly amazed on reading this, for I do not believe it possible to find another instance in which, in assigning the reasons *a priori* for the conclusions of a learned court, there is stated in so small a compass so much of *untruth* and the same affirmed *ex cathedra* to be a "fact known to us judicially."

First.—Contrary to the affirmation of the supreme court of appeals, statutes of Virginia declare that the second auditor was not, and should not be, a member of the board of commissioners of the sinking fund as that fund was established prior to the passage of the "funding bill," [see code of 1860, chap. 44, section 6]; and his duties under the law establishing that fund were incompatible with membership in a board to manage it. [See same chapter of the code of 1860.] But more than twenty years after the establishment of the sinking fund of which he was not one of the commissioners, a new sinking fund was established by law radically different from the former sinking fund, and he then, and not till then, made a member of the new board to manage this new sinking fund [see "funding bill."]

Second.—Contrary to the affirmation of the supreme court of appeals, if now, Mr. Wise, will compare the "records in relation to the transactions of the sinking fund" prior to the passage of the "funding bill" (which were, indeed, "kept" in the second auditor's office, but only in the sense of being deposited there for safe keeping), you will find that the said records are not only NOT "precisely like" the warrant book of the sinking fund as kept in the second auditor's office, which is the only "record of the transactions in relation to the sinking fund," which it is even pretended that there has been kept "since the new sinking fund was established" *by the second auditor*, "under the 22nd section of chap. 42, code of 1873," but you will find that these two "records" were absolutely and essentially *different* from each other. They differ from each other, fundamentally, in respect of the underlying *system* upon which they were, respectively, kept; they differ from each other, essentially, in respect of the characteristics and qualities which can alone give the weight and title of *authenticity* to a public record; they differ from each other, practically, in respect of the nature, character and extent of the *information* which they, respectively, contain as a "record of the transactions in relation to the sinking fund;" and they differ from each other, absolutely, in respect of the *purposes*, as sources of information, for which they were, in fact, respectively, *kept* and *used*. It is, I respectfully submit, difficult to conceive how two such things *can* more entirely and absolutely differ from each other than a *physical comparison* between the records of the old sinking fund and the "warrant book of the [new] sinking fund, as kept in the second auditor's office," *proves* that *they* do differ from each other; notwithstanding the affirmation of the supreme court of appeals to the effect that they are "precisely alike."

Third.—Contrary to the affirmation of the supreme court of appeals, I have already hereinbefore conclusively PROVEN *by the supreme and incontestible testimony of physical facts* that the second auditor, up to the date of my trial, had "annually reported the same [the transactions in relations to the sinking fund] to the legislature, as a portion of the transactions of his office." For I have PROVEN that the second auditor had NEVER MADE ANY REPORT, annually or otherwise, "of the transactions in relation to the sinking fund" either as "a portion of the transactions of his office," or otherwise.

Now, I think it must be conceded that an "affirmation" by the supreme court of appeals (supposing that they were to make such an affirmation) that the bed of the Potomac river is on the same level as the summit of the Peaks of Otter could not make that A FACT in spite of the proofs which physical geography adduces to the contrary; and no more does their "affirmation" now that it

t known to us judicially" make it true that the second auditor has annually reported to the legislature, "under the 22nd section of chapter 42, code of 1873," the transactions of his office in relation to the sinking fund, in face of the fact to the contrary that *all of his reports have been examined and found to contain nothing*.

On reading the passage I have quoted in the "opinion" of the supreme court of appeals, I was struck with amazement, and no doubt you, Mr. Wise, will be astonished on reading it now. In my meditations on the subject, I felt, as a Virginian who loves his state, a painful regret that that august tribunal, our supreme court of appeals, should have put themselves on the record as giving their judicial sanction to a *falsehood*. I did not think that they had done this injury to me because of any personal feeling against me; but I believed that they had done so through inconsiderate *haste*. It illustrates the indecent rapidity with which the proceedings in my case were *rushed through*, from first to last. If the object had been to get me into the penitentiary as quickly as possible, before the fury of public indignation which had been cunningly aroused against me, should have time to cool and react in my favor upon a full development of the facts, a better plan could not have been devised than that pursued. I would fain believe that the supreme court were not conscious that they were bending to the popular whim for the punishment of a prisoner accused (though falsely) of stealing public funds.

With a patriot's sincere desire to save the highest court in the state from the loss of public confidence which I feared it might sustain, but with no motive of self-interest whatever, I conceived the idea of privately communicating the facts I have related to one of the judges of the court, with a view of affording an opportunity, if possible, to amend the opinion by striking out the passage I have quoted. Accordingly, I got the superintendent of the penitentiary to send a note for me to Judge Jos. Christian, one of the judges, requesting him to come and give me an interview. I made this request of him because I had learned that he was not on the bench when my case was before the court, and, as a matter of delicacy, I thought it best to make the communication to him rather than to any other member of the court. Having also heard that he was on terms of great intimacy with Governor Kemper, I was afraid he might be deterred from visiting me by the idea that he might solicit his good offices to obtain a pardon for me; and therefore in my communication I took occasion to disavow any such intention and assured him that I wished to communicate with him only on a subject of interest to the court of appeals. After a delay of more than a month, Judge Christian did visit me, and I communicated to him the facts as I have related them herein. At the close of the interview Judge Christian suggested to me that if my friends would get up a petition to Governor Kemper for my pardon on the condition that I should leave Virginia and never more return, he thought Governor Kemper would pardon me. He said he was so confident of it that he would be "almost willing to guarantee it." And then he added some encouraging references to what he was pleased to call my "talents and acquirements," and said that if I would go to "a new country" like Colorado he thought presented the most inviting field—I could rise to a high position in the world. My response was in these words, to wit: "Judge Christian, were to ask the governor to pardon me on the condition of expatriation it would be tantamount to a confession that I was guilty of the crime of which I was recently convicted. Sir, I have never committed any crime yet, and I will *not* in any way before I will do or say anything which may even imply that I have." And upon he left me.

In reply to all this, I know that I may be answered that even if it be conceded that the character and importance of the warrant book of the sinking fund, as a

record, and the purposes for which it was used, as a source of information, were falsely represented in the testimony of the second auditor; and that the judicial declaration of the supreme court of appeals to the effect that the said testimony was "fact known to us judicially" was also in reality false; and even if it further conceded that the real facts in the case fully prove that the said warrant book was not a public record and therefore could not be, in law, the subject of the crime imputed to me; yet all my labor in proving this has only been upon the line of now supplementing the efforts made by my counsel to secure my escape from the penalty of the law by means of a "legal stratagem." And I know that I may be told that neither facts nor arguments upon *that line* can affect the moral aspect of the charge upon which I was tried. In the present consideration of this case, truth and justice are to be regarded, but not such technicalities of the law may chance to favor the acquittal of the guilty.

I think I may justly claim the right to save the point that my whole cause was staked by my counsel upon their own voluntary suggestion, upon their professional success as "legal strategists;" and that, without any fault of mine, they thus lost my case through ignorance of the real facts or through a failure to present them; and that, therefore, my false conviction was the consequence of inefficient defence and not a proof that I was in reality guilty. Since, therefore, my only chance of "acquittal" was in an appeal from the judgment of the *nisi prius* court to the supreme court of appeals, through which, as Mr. Royall inferred in his note to me after my trial, my counsel expected "a reversal of the verdict," I think I have the right to present the disproofs of the testimony as to matters of fact by which the appellate court were misled and deceived in forming their opinion affirming, instead of reversing, the verdict. Saving this point, I am quite willing to admit that the question to be considered is not whether the warrant book of the sinking fund is a public record and, as such, capable of being forged? But it is: Is the fact charged against me in the indictment true, namely, Did I, in reality, make an erasure in the said warrant book, *with intent thereby to defraud the commonwealth*?

If it were possible, I would gladly go to trial now, *de novo*, upon this charge before any impartial jury of my countrymen, and ask no favor but a fair trial. But as this cannot be done, I propose to prove to you, Mr. Wise, that the charge is false. In the first place, you have seen from my references to the *orders* filed in the second auditor's office, and the *warrants* filed in the treasury office, that I *could not* defraud the commonwealth by making any erasure in the warrant book of the sinking fund; because these *orders* and *warrants* would be a prompt and effectual check to prevent it. As it was known to me that it was thus impossible to defraud the commonwealth by making an erasure in the warrant book of the sinking fund, if I had attempted to do so, I ought to have been put under restraint as an idiot instead of a criminal.

In the next place, you know, Mr. Wise, from the evidence at my trial, that Gov. Kemper swooped down upon me so suddenly in his imperious demand for "an immediate investigation," that he did not allow me time even to arrange my books and papers of the sinking fund, much less to take this warrant book and go over the entries in it with such careful examination as would have been necessary to enable me to pick out this particular entry, and make just such an erasure as it would make a reduction of just \$10,000. There are many other entries in that warrant book, as you know, Mr. Wise, which could have been altered, and if I had been seeking to defraud the commonwealth by altering any entry, surely I am intelligent enough to have made a more judicious selection. You know from the evidence, Mr. Wise, that up to the hour when Gov. Kemper demanded "an immediate investigation" there was no earthly reason why I should have altered

the warrant book ; for the making up of the accounts of the sinking fund was left solely to me, and I was thus accountable only to myself ; and you also know, Mr. Wise, from the same evidence, that after that hour this warrant book remained in the hands of auditors Taylor and Rogers, and that I had no possible access to it and could not have made any erasure in it, even had I desired to do so. You know from the evidence, indeed, that I had no opportunity even to examine it at any time after Gov. Kemper demanded "an immediate investigation," except in the manner and at the time I have herein specified ; namely, when treasurer Mayo permitted me to take it from the treasury safe on Friday evening, for the purpose of making the examination, as I have related. Besides, you know, Mr. Wise, that there has never been a syllable of evidence to show *when*, or *where*, or *how* I did

It must, therefore, I respectfully submit, be conclusive to any fair-minded man that up to the hour I have specified, I had *no motive* to make the erasure ; because the crime of forgery consists of "false-making, forging and counterfeiting," with intent to defraud some one. In this case it was a public record alleged to be the subject of "false-making" by alteration, and it was well known to me, I have shown that such an alteration could not defraud the commonwealth. Therefore, the only motive which the law recognizes as constituting the gist of a forgery was manifestly absent ; and therefore I could have had no motive to commit the act. It was, in fine, morally preposterous that I should have done it before a certain hour specified, and physically impossible for me to do it after that hour.

Finally, the only evidence to connect me with the alleged erasure at all, was, you know, Mr. Wise, the testimony of treasurer Mayo. Judge Guigon informed Gov. Kemper that I would not have been convicted "in the absence of Mayo's testimony" ; and you know, indeed, that my arrest and trial was, in fact, brought about by means of a warrant against me sworn out by, and at the instigation of, treasurer Mayo. In the narrative of the real facts in the case, and especially the real character and incidents of the interview between treasurer Mayo and myself, on the Saturday night preceding my arrest, I have shown the atrocious untruthfulness of his testimony at my trial. I now offer the evidence, in the nature of a physical fact, to prove my statement true in denial of my alleged "confession" to him. It is to be found upon an examination of the sheet of paper on which auditor Taylor put down the amounts of bonds purchased, as the same were called off by auditor Rogers, on the Thursday afternoon when Gov. Kemper was present and personally supervising the "immediate investigation."

You saw me, Mr. Wise, when, at my examination in the police court, I pointed to Gen. Bradley T. Johnson on that paper where I had rubbed out the figure in pencil-mark, just as I have related that I did, on that Friday night, between the hour of 12 o'clock midnight, and 2 o'clock A. M., when making the examination of the warrant book, as I have fully related hereinbefore. And now I will add you, Mr. Wise, of another corroborating circumstance. It is as follows : At the time the jury had brought in their verdict against me, notwithstanding the enfeebled and prostrate condition of mind and body in which I then was, I had a dim perception that my counsel had not made any real defence for me as to the fact alleged in the indictment, and I conceived the idea that it might become possible some future day for me to make that real defence before the public for myself. On that idea, I went to you, Mr. Wise, in the court-room, before I was removed to conveyance to jail, and then and there described to you the paper on which auditor Taylor put down the amounts of bonds purchased, as the same were called off from the warrant book by auditor Rogers, and you told me you understood the paper I meant ; I then stated to you that the said paper was of the highest

importance to me as a thing of evidence to prove that I never made any such "confession" as treasurer Mayo had falsely testified to, and I then besought you, Mr. Wise, as an officer of the court, to take that said paper and have it carefully preserved, just as it was when first produced in the police court, until circumstances might permit me to call upon you for it to be used as evidence for my vindication. You promised me, Mr. Wise, that you would do so. If you have done so, please let it now be produced. It will prove my statement in reference to it TRUE, and thereby prove that the facts were as I have hereinbefore related them and not treasurer Mayo falsely testified that they were.

So much has been said, and published in the newspapers, in relation to the insanity of treasurer Mayo, that I do not care to enter upon any consideration of that matter here. A jury decided that he was insane, and he was therefore prosecuted for the crimes for which he was indicted by the grand jury. To the average citizen of ordinary intelligence, it would seem that if he was irresponsible for his own crimes, because of his insanity, he would be incompetent as a witness as to matters which occurred during the period when he was insane. And I may safely affirm that that is the universal judgment of all lawyers. But the courts, by a peculiar course of reasoning too metaphysical for ordinary justice between man and man, held, in effect, that although it was established by the evidence that he was "a few days shortly before his examination" as a witness at my trial "decidedly insane;" and also that "a few days after his examination" he was "in the same condition" and that for months afterwards he was and continued to be "a lunatic;" yet as it was not *proven* that, at the very moment he testified, he was then insane, that therefore "he was competent." The supreme court of appeals admit in their "opinion," pronounced in my case, that *it was proven* that a few days before he testified he was "decidedly insane" and that testimony on this point, as you know, Mr. Wise, embraced the very Saturday night on which the interview between him and myself occurred. The effect of the decision of the court is therefore that a madman "in a lucid interval" is a competent witness as to matters which occurred at a previous period when perhaps he may have been rolling in a wild phrenzy of madness. If this is the law, the sooner the legislature amends it for the protection of unoffending citizens, the sooner will be it safe to reside in Virginia. If the ruling of the courts in my case is to be enforced as a precedent, no citizen is safe from the fate which befalls me, if at any time he may happen to be thrown in company with a lunatic who is subject to "lucid intervals." I hope, for the safety of society, that the legislature at its next session will enact a law so restricting the courts in receiving "testimony" of *insane witnesses*, that hereafter no citizen may be subjected to my miserable fate. And I would suggest that if ever such a case as mine should again occur in which a witness, in a *lucid interval*, is allowed to testify as to things which occurred when he was mad, as afterwards adjudged by a commission *lunatico inquirendo*, the law ought to provide that the verdict and judgment rendered upon his testimony shall be declared void and set aside.

I am aware that a madman may have a lucid interval, and that in a lucid interval he may be allowed to testify as to facts which occurred *in that lucid interval*, before he became insane; though even then the jury must be notified of the mental condition of such a witness and his testimony will be received with great caution. But I defy even your learning and ingenuity, Mr. Wise, or that of the court of appeals to produce another case, in all the judicial annals of the civilized world, in which a lucid madman, or a madman in a lucid interval, has been allowed to testify as to facts which occurred *while he was a madman*. The reason for this is so obvious that every man, even he who runs may read it with wit: A lunatic is *non compos mentis*, that is, he has, at the time of the alleged

occurrence not mind enough to take in the facts, and is not responsible for his own acts. So that, if he commits murder even, or what would be murder in another, it is not murder in him, and he will be acquitted. And only think of the monstrosity of permitting a man who is acquitted of the crime of killing, because he has no mind and therefore no consciousness, being permitted to testify that while thus mad, perhaps as he rose from the body of his bleeding victim, he saw another man commit another murder, and upon his testimony the other man hanged! The absurdity of such a proposition is sufficient to extinguish it, but its monstrosity is shocking and inhuman. Yet upon such testimony have I been made to suffer, while the man who slew me walks abroad as an innocent for whom not merely sympathy, but full respect is demanded.

You also attempted, Mr. Wise, in conducting the prosecution, to show that I had a *motive of concealment* to make the alleged erasure. For that purpose two professional gamblers were introduced as witnesses. One of them said that I borrowed \$100 from him, and left a state bond in his hands for security; but that in a day or two afterwards, I returned the \$100 to him and he the bond to me, thus cancelling the transaction. There was certainly nothing in this transaction to infer any motive on my part to make the alleged erasure; and I think that you, Mr. Wise, have so admitted.

The other of these witnesses said that I *sold* him \$600 in state bonds and sixteen three-dollar coupons. The testimony of this witness was false. I never sold him a bond, or a coupon, in all my life. But I went into his gambling-house one night, with a party of friends, and lost more money, at play, than I had on hand. And thereupon I put into his hands these bonds and coupons to hold, as security, until I could conveniently pay him the money. Up to the time of my arrest, I had not paid him the money, and he then took advantage of my situation to claim their ownership, as forfeited; and then at my trial falsely swore that I had *sold* them to him.

But, even if it had been true, I respectfully submit, as a cogent argument of arithmetic, and of reason, that it could infer no motive on my part to make the alleged erasure. For if the alleged erasure could have made it appear that the amount of bonds on hand was at all less than it really was, it would have made it so appear to the amount of \$10,000; and it would have been a preposterous proceeding to attempt to make it appear that the amount of bonds was \$10,000 less than it really was in order to conceal the larceny of only \$600 of said bonds, even if I had been guilty of that larceny.

Again: As you well know, Mr. Wise, there was no evidence, whatever, that these \$600 of bonds had ever belonged to the sinking fund. Though there was the strongest presumptive evidence to the contrary. Because, neither you, Mr. Wise, attorney for the commonwealth, nor Judge Guigon, presiding in the court, made any effort to require this witness to disgorge the property and restore it to the sinking fund—as, of course, you would have done, had there been any reason to believe that the bonds in question belonged to the sinking fund.

The real fact was that these bonds were my own property. As I have shown, hereinbefore, I acquired \$560 of "peeler" bonds, as "difference," by making the exchange of "consols" for "peelers" with Mr. J. C. Williams, of the firm of Hays, Taylor & Williams; and, as I have also hereinbefore pointed out, in the speculation in which I engaged with Messrs. Parker Campbell & Co. in the "registered" consols, bought in Baltimore, one \$100 "peeler" bond was taken from them, through mistake, in a lot of bonds purchased, and, in the settlement between us, this one \$100 "peeler" bond was turned over to me for value. And these "peeler" bonds, amounting to \$660, were, as I have shown, my own property, of which I used \$600 to put up, as security, for the money I had lost at

play in the gambling-house of this witness. The coupons were detached coupons belonging to the said bonds. I do not attempt to extenuate, far less to justify my folly and wickedness in gambling against this professional gambler, or even entering his gambling-house, at all. I am heartily sorry for it and have deeply repented. But yet, in all humility, I think I may justly claim that such "gentlemanly dissipation" is not criminal, though wicked and foolish; or if criminal according to the rigid moral code, yet not of so grave a degree as to deserve the merciless infliction which has been visited upon me.

In your great zeal, Mr. Wise, to secure my conviction, I well remember how in your address to the jury at my trial, you truculently assailed me with a shower of opprobrious epithets. In one of your rhetorical flights you denounced me as "hawking the bonds of the commonwealth in the faro-banks of the city." At the time you did this, I was a helpless prisoner at the bar, in the hands of the law and compelled to endure, in silence, all the denunciation which, for effect upon the jury, you chose to heap on me, and the court permitted. I wish to say now that I harbor no bitter resentment towards you; because I think the injustice you did me was born of your great zeal to discharge your duty, as a public prosecutor, especially in a case like mine where the accused had held high position in the counsels of the political party which elected you to the office you held.

And yet, with no animosity towards you, Mr. Wise, I cannot but reflect that in the instance indicated you were but "substituting the delusive glitter of a lively and pompous eloquence, in place of sound statements and reasonable conclusions." For, as I have just shown, there was no evidence, whatever, that the bonds in question were "the bonds of the commonwealth;" except in the sense that they were her promises to pay; and there was also no evidence, whatever, that I was ever in any of "the faro-banks of the city;" unless upon the presumption that the jury personally knew that your two witnesses were professional gamblers and that "places of business" faro-banks. That they were such, however, might have been shown by the records of the court, had you chosen to produce the said records of date just two years prior to my trial. The said records would have shown that your two witnesses had been indicted by the grand jury for keeping a faro-bank. Also for unlawful gaming. But it appears that they effected some sort of a "compromise" by which they were allowed to plead "guilty" to unlawful gaming, which is punishable by a small fine; and *nolle prosequi* was entered to keeping a faro-bank, which is punishable by fine and imprisonment; and that they "got off" and resumed their operations, each at his same "place of business."

There is a tradition related of an eminently illustrious Virginian, reference to which I crave permission to make in this connection. He, when young, possessed such talents as excited high hopes of his career. But, in an evil hour of idleness he learned to play billiards and became so infatuated with the game that he neglected his vocation. Finding that he could not be weaned from this fascinating pastime by persuasion or appeals to his reason, his friends who were influential with the legislature, procured the enactment of a law imposing so heavy a tax upon billiard-tables as to practically drive them from the state. Thus freed from temptation he devoted himself to his profession, and achieved a noble successful life as Chief Justice Marshall of the supreme court of the United States. The purpose of my reference to this tradition, Mr. Wise, is to suggest that if you, prosecuting attorney, and the same court which tried me, had enforced the law against these two witnesses when they had been indicted by the grand jury, it might have been better for me; because up to that time I had never indulged in the "gentlemanly amusement" of losing my money at faro.

Whatever may be the opinions as to all that I have hereinbefore related, v

an now about to show will at least interest every lawyer, I think. One of my purposes in presenting the full text of the indictment on which I was tried, as I did at the outset hereof, was that I might conveniently refer to it in this connection. Please examine it now. The specifications of the offence imputed to me therein marshaled as follows:

(1.) That I was a public officer; to wit, Secretary of the Commissioners of the Sinking Fund.

(2.) The book, or record, alleged to be the subject of the crime imputed to me is described as "the warrant book of the said sinking fund."

(3.) The fact alleged is "falsely and corruptly erasing the figure 1," etc., in said warrant book "with intent to defraud."

Now, when the law prohibits an act and declares it unlawful, it also prescribes the punishment to be suffered by any person found guilty of the act prohibited. When the jury pronounce the person guilty of the fact alleged, it is the province of the court to enforce the sentence prescribed by law, whether the crime be treason, murder, arson, larceny, or whatever it may be. And the court may not lawfully sentence to any heavier punishment than that prescribed by law. What is the punishment prescribed by law for the offence imputed to me as specified in the indictment on which I was tried? Here it is as you will find it in the code of 1873, chapter 190, section 22.

"Section 22. If a clerk of a court, or other public officer, fraudulently make a false entry, or erase, alter, secrete, or destroy any record in his keeping, belonging to his office, he shall be confined in jail not more than one year, and not exceeding one thousand dollars."

It is therefore clearly shown from this citation of the law that even if I had been guilty, as found by the jury upon the false evidence before them, the maximum punishment to which I was liable was to be "confined in jail not more than one year, and fined not exceeding one thousand dollars." Instead of this comparatively light punishment prescribed by the law, I was compelled to endure a penal servitude for four long years of wretchedness and misery. Had Judge Ogden sentenced me to be hanged it would have been as lawful as the sentence which he did pronounce!

I have thus shown that the sentence of the court was grossly in excess of that prescribed by law for the offence imputed to me, even if I had been guilty. I will now show that this atrocious wrong was enormously aggravated by the indecent haste with which it was imposed.

The sentence was pronounced on the 28th of March, 1874. But during the progress of the trial exceptions were filed to several rulings of the court. This was the "plan" of my counsel (as afterwards indicated in Mr. Royall's note to me) to obtain "a reversal of the verdict" by the court of appeals. Now the law provides as follows:

"If a person, sentenced by a circuit, or corporation, or hustings court to death or imprisonment in the penitentiary, ask for time to apply for a writ or error, the court shall postpone the execution of its sentence until a reasonable time beyond the first day of the next term of the court of appeals, not exceeding thirty days after that day." [See code of 1873, chapter 203, section 2.]

This mandate of the law is plain and explicit. Its object is to secure the right against the "snap-judgment" of a *nisi prius* court. Under it I had the right of a delay in the execution of the sentence until "a reasonable time beyond the first day of the next term of the court of appeals." My trial was held in Richmond, Va., and "the next term of the court of appeals" was not held (for Richmond is in Virginia) until the following December, a period of *nine months*. But the court declared "that the sergeant of this city do, as soon as practicable after the expi-

ration of *sixty days* from this day, remove and safely convey the said William Coleman, from the jail of this city, to the said penitentiary." Had Judge Guignard not thus arbitrarily reduced the period of delay to which I had a right, under the law, I might have been saved, as events have shown, from the horrible fate which I was subjected.

But I will also show that this summary injustice in the order of the court was exacerbated in the execution of the sentence by curtailing the respite to which was entitled, even under the said order of the court.

About the time the opinion of the appellate court was rendered, I had sufficiently recovered in bodily health, mental strength, and vigor of spirit to look into my case myself, with a view of making my own defence. I had thus formed the purpose to attempt to secure justice by my own efforts. For, from Mr. Royall's note to me, and from my own reflections, I was now aware that, in fact, no defence had ever been made for me. My purpose had been formed as follows: In case the appellate court "reversed the verdict" as Mr. Royall expected, the effect would be to give me a new trial, and I intended then to defend myself in court. Or, if the appellate court confirmed the judgment against me, then I would avail myself of the right of petition to the executive, and in my petition embody all the real facts, as I have set them forth herein; and this petition I intended to address to the executive through the public prints, so as to get a hearing of my case in the tribunal of public opinion, the court of last resort. This purpose was made known to the few friends who favored me with a visit in the jail. As soon as, therefore, as the opinion of the appellate court was rendered (April 29th, 1871) I set to work at once to prepare my petition.

On Saturday, May 2nd, while I was thus engaged, a member of the Senate of Virginia—Hon. A. W. C. Nowlin—came to see me at the jail. He told me that he had come to see me direct from Gov. Kemper's office, after holding a long interview with him; he being, as he gave me to understand, on very intimate terms with Gov. Kemper. With this introduction Senator Nowlin continued the conversation by proposing that if I would put myself into his hands and do what he told me, he would guarantee that a pardon would be sent me in less than twenty-four hours. Now Senator Nowlin and myself had been friends from boyhood, a fact to which he feelingly referred in talking to me, and I was fully persuaded that he really desired to assist me, and to extricate me from my wretched situation. But I told him that while I had the utmost confidence in him, I could not promise him, or any man, that I would, blindfolded as it were, do whatever he advised; and I asked him to tell me first what it was he was going to tell me to do. He then said that Gov. Kemper was firmly of opinion that in the settlement between the state and the Richmond and Danville railroad company on account of the sale of the state's interest in that company, there had been a great fraud perpetrated by which the state had lost an immense amount. He said he had talked this subject over with Gov. Kemper and had come direct from him to me to tell me that if I would furnish Gov. Kemper with such information as would enable him to go after the authorities of the Richmond and Danville railroad company on account of this alleged fraud against the state, that Gov. Kemper would pardon me at once.

In reply I told Senator Nowlin that, to the best of my knowledge and belief, the settlement between the state and the Richmond and Danville railroad company had been absolutely correct, in every particular; and although a pardon would relieve me from my wretched situation, yet I could not, in order to obtain it, furnish the governor with the information he desired, because I had no such information, and would not pretend to have it, in violation of truth and honor. He then left me.

On Sunday, May 3rd, Mr. John G. Mosby, a clerk in auditor Taylor's office came to see me. Just before concluding his visit, he said that he had heard that I intended to make a publication, and asked if it was true. I replied affirmatively. He then suggested that if in that publication I would exonerate treasurer Mayo, the governor would pardon me at once, he thought. He said that treasurer Mayo had some very influential friends—he named Senator Withers, Gen. Pickett and others—and that if I would thus relieve him, they would use their great influence with Gov. Kemper in my behalf. He thought Gov. Kemper himself would be inclined to do it in that event, because he also was a warm personal friend of treasurer Mayo. He also hinted that if I would do it, the influence of the Association of the Army of Northern Virginia would be exercised in securing pardon for me, because treasurer Mayo was a popular member of that association. I told Mr. Mosby that I could not possibly do what he suggested; that I had committed no crime, but had been falsely convicted upon the false testimony of treasurer Mayo. He then asked me if I meant to say that I did not tell treasurer Mayo that I had made the alleged erasure in the warrant book of the sinking fund? I replied: "Not in the way he said I did, but altogether differently." He made no further reference to the subject.

On Monday, May 4th, Major Raleigh Colston, called to see me. He is a clerk in the treasury office, and was known to me as the chief clerk and intimate friend of treasurer Mayo. It was late in the evening when he called, and very soon the jailor came to lock me up for the night. Major Colston left reluctantly, apparently having on his mind, as I thought, something which he wished to say to me.

The next evening, (Tuesday May 5th,) he came again, and this time he proposed to tell me at once the object of his visit. He said that "in a lucid interval" treasurer Mayo (who, in the meantime had been adjudged insane) had had a talk with Mr. Henry Eustice (another clerk in the treasury office, and intimate friend of treasurer Mayo) and had asked him to come and see me and get me, in the publication which it was reported I intended to make, to so represent affairs as to exculpate him (treasurer Mayo). For thus relieving him, Major Colston gave me to understand that I would be pardoned at once through the efforts of influential friends of treasurer Mayo. He did not, indeed, present this proposition, all at once, as broadly as I have stated it here, but rather led up to it suggestively and in degrees. Treasurer Mayo had asked Mr. Eustice to come and see me on this subject, but Mr. Eustice thought it would be better for Major Colston to do it, and he had agreed. He considered treasurer Mayo already a ruined man, but he appealed to me in behalf of his little children whom I could relieve from the burden which would rest upon them, in after life, if I would now exculpate treasurer Mayo, by declaring to the world that I was guilty and he was not; and that I would so would not make my situation any worse for I was already under conviction by the jury and would be imprisoned; whereas, if I would relieve treasurer Mayo, I would be pardoned and could go off to a new country and start life afresh. Such, in substance, was the overture that Major Colston made me as the clerk of treasurer Mayo; but while conversing with me and leading up to the object of his visit, he related several incidents to show the condition of treasurer Mayo; one of which I thought significant and will repeat here. He said that on Tuesday evening after treasurer Mayo had testified in my case, he went to the treasury office and informed his clerks that he was "going to the country," for a few days, "for his health;" but instead of doing so, he took the northern train, and, as he (Major Colston) afterwards ascertained, went to Syracuse, New York; but suddenly returned the following Saturday. My own opinion then

was, and is now, that he started to flee to Canada, fearing that I would be acquitted.

After hearing Major Colston patiently, and without interruption, I then replied that I was very sorry for treasurer's Mayo's little children; although I had been convicted of a crime which I never committed on the false testimony of the father. But not through pity for them, even, could I affirm that I was guilty when I was not, in order that he might be exonerated. "For," said I, "I have committed no crime yet, and I certainly shall not begin with perjury against myself." Major Colston remained silent and there was a pause in the conversation. Then I added that even if I should admit that I was guilty, when I was not it would not relieve treasurer Mayo. There were others beside myself who knew that he had made exchanges of "consols" for "peelers" and pocketed the "difference." This indeed was no crime, but treasurer Mayo had committed the crime of perjury in swearing that he had not done it when he had, and his perjury could be proven by others, even if I also should perjure myself to sustain a thus exonerate him. Major Colston replied to this that, personally, he had never known anything about any "exchanges" of "consols" for "peelers," but he had heard the subject referred to in the treasury office, and it was then mentioned as a very good operation." The interview was then brought to a close and he left.

As soon as he was gone, the jailor came to lock me up for the night. As he was doing so, I reminded him of the fact, of which I had previously spoken to him, that under the order of the court suspending the judgment against me, there was no authority to convey me to the penitentiary before the 28th of the month (which was then the 5th), and asked him if he had been told anything about taking me there at any earlier time. He assured me that he had not and again promised that in any event he would certainly give me notice two or three days before my removal, so that I could make such disposition of my affairs as was necessary. He then locked me up and I resumed the writing of my petition in my cell.

Next morning (May 6th) at 5 o'clock A. M., the jailor came to my cell and notified me that I must be ready by 9 o'clock that same morning to be conveyed to the penitentiary. On my remonstrating against the suddenness of this removal and reminding him of his promise to give me at least two or three days notice, that I could arrange my affairs, he informed me that the previous night after 11 o'clock, after I had been locked up, he had received AN ORDER to convey me to the penitentiary that morning by 9 o'clock. He then handed me a note which he said had been received the previous evening. This note had been opened and doubt read before delivery to me. It was as follows:

"OFFICE OF RICHMOND DISPATCH.

RICHMOND, VA., May 5th, 187

Dear Coleman:—There is a report current that you are preparing for publication a succinct statement of the sinking fund matters; and I write this to ask that you will let me have it exclusively—or at least to use it the day before any one can get at it. If you can do so you will greatly oblige.

Your friend,

EDWARD H. FISHER

On reading this note I called to mind the mission on which Maj. Colston had come to me the previous evening, and at once concluded that the object of his summary removal to the penitentiary was to prevent me from publishing the statement which I intended to publish. But under the circumstances I was powerless to resist the wrong thus imposed upon me. An "ORDER" had been issued down to the jail at the dead hour of the night for my removal at so early an hour that it cut me off from all opportunity to communicate with any friend, and I could do nothing but protest and comply with what was required of me. From where this "ORDER" came I have never been able to learn, but my opinion is that

usual of the proposition to "exonerate" treasurer Mayo was the cause of its being sent.

As I have stated, *the order of the court* postponed the judgment for sixty days from the 28th of March. Although before the expiration of that period, the opinion of the appellate court was rendered (for *expedition* characterized the summary proceedings in my case at every stage), yet *the order of the court which had the case remained unchanged*, but was, in fact, AFFIRMED, in connection with the judgment. I could not lawfully be subjected to the punishment to which I had been sentenced *until the time indicated in the order of the court*. I called the jailor's attention to these points whilst protesting against this summary removal to the penitentiary, but he only replied that he was obliged to obey the "ORDER" sent him the previous night.

Being powerless to resist this unlawful removal to the penitentiary, I hastily made what preparation I could, though still protesting, and at 9 o'clock that morning (May 6th, 1874), I was taken by the jailor to the penitentiary and turned over to the authorities there for incarceration. Thus twenty-two days before the order of the court authorized it to be done, was I subjected to the hardships and humiliations of a convict's life, for a crime which I never committed, but which, had I been guilty of it, was punishable under the law by imprisonment in jail exceeding twelve months.

Such was the vehement haste to get me into the penitentiary where as in a "living grave," I should not be able to make that appeal to public opinion which I contemplated, that time was not afforded even to the clerk of the court to make a copy of the record in the case, as required by law, to be delivered at the penitentiary with me, and I was taken there and received as a prisoner by an officer acting as superintendent, without any copy of the said record at all, and forthwith locked up in a loathsome cell. Apart from the fact that the jailor had taken me to the penitentiary twenty-two days before the order of the court authorized it, yet without a copy of the record in the case as required by law, it was unlawful to receive me as a prisoner into the penitentiary, as it would be to receive any citizen who walks the streets of Richmond to-day, if kidnapped and taken there.

In striking contrast with this summary method of immuring me was the manner in which, a few months later, a professional gambler was treated, who, (Judge Guigon intimated in a published letter) had been a zealous agent for "small-fry politicians" in Richmond. This man had been convicted of kidnapping an elderly gentleman from the country, and when the jailor, in compliance with the order of the court (and not against it, as in my case), was conveying him to the penitentiary he was stopped on his way by a messenger from the executive mansion—one of the Governor's aides-de-camp—with an order from Gov. Kemper, directing the man to be returned to the city jail; and he was kept there several days, while Gov. Kemper was "considering" whether he would do him or not.

For many long and weary months after my summary and unlawful incarceration, the misery and wretchedness of my situation were too distressing to be described. I disdain the *argumentum ad miserecordiam* and will not dwell upon the story of the wretchedness I suffered.

There was only one method by which I could obtain relief, namely, by petition to the executive. Under the law, in a controversy touching property there is no recourse from the decision of our highest court; but a citizen's life or liberty is more precious than his property. The law has therefore provided that where liberty is at stake there may be a recourse for the citizen even beyond the last tribunal of the law. This recourse is to the SOVEREIGN. In America,

where sovereignty resides in the people, one of its highest attributes—that pardoning,—is vested in a chosen agent of the people, because a *plebiscitum* every case would be impracticable. In the federal government, the President is this agent; in some of the states it is a commission called the court of pardon; in Virginia it is the Governor. But in whatever agency vested, it is a *function* to be exercised by this agent with reference to the will and pleasure of the principal, namely, the sovereign people. It is not a *prerogative* of the person who holds the office of Governor. And the right of a citizen, when overwhelmed by misfortune as I was, to petition the SOVEREIGNTY of his country, (albeit the exercise of its munificence be vested in an agent) is as sacred as the right of petition under any other circumstances. But, as has been seen, the most summary measures were taken to deprive me of the opportunity to petition, by executing the judgment against me, twenty-two days before the time designated in the order of the court which pronounced the sentence. Indeed, the course pursued against me was such as might have been inspired by the spirit of the Fehmgericht, from which the precept comes that “dead men tell no tales.”

After my incarceration, of course, I had no opportunity to petition. Besides, I was repeatedly admonished that any petition from me to Gov. Kemper, would be unavailing. Members of the legislature, who had been my personal friends, occasionally visited me, as under the law they were privileged to do, and even one of them told me that even the favorable mention of my name to Gov. Kemper invariably excited his ire. On one occasion, as I learned, several members of the legislature together visited the governor in his office, and one of them spoke of me in a kindly manner. Gov. Kemper, with a warmth which was almost wrathful, took up the subject and exclaimed against these kindly expressions in my favor by members of the legislature. Becoming excited by the conversation, he rose from his chair and paced the floor, vehemently haranguing his visitors in a sort of cabinet speech against me, vindictive in spirit and full of invective. I relate this incident as it was told to me, and has since been corroborated by substance, by you, Mr. Wise, who was present in the governor's office on that occasion, as I have been informed.

All this, let it be remembered, was before any petition in my behalf had been presented to Gov. Kemper, and at a time when I was deprived of even the opportunity to petition. What chance could a petition in my behalf have had of a fair and impartial consideration at his hands?

Mindful of the fact that the people of Virginia have once chosen Gov. Kemper to the highest position within their gift, I will make no reflections upon him. When Saint Paul was brought before Ananias, he essayed to assert his innocence, but was ordered to be smitten in the mouth. The apostle denounced Ananias for thus denying him a hearing, “contrary to the law,” and threatened him with the vengeance of Heaven—“God shall smite thee, thou whited wall.” But being reminded that he was addressing the High Priest, he humbly submitted without another word; because, as he said, “it is written, Thou shall not speak evil against the ruler of thy people.” Yet, surely, I may be permitted to suggest, in the language of Gibbon, that “We may learn from the example of Constantine that a character of pure and inflexible virtue is the most apt to be misled by prejudice, to be heated by enthusiasm, and to confound private enmities with public justice.”

At the same time that I was thus summarily immured in a convict's cell, the treasurer Mayo was conveyed to a lunatic asylum, he having been adjudged insane by a commission *de lunatico inquirendo*.

About eighteen months after my incarceration, I was informed that he had recovered from his lunacy and was to be speedily tried upon certain indictments.

which had been found against him by the grand jury. These indictments were for the larceny and embezzlement of state bonds belonging to the state treasury—not those missing from the sinking fund. I became apprehensive that at his trial advantage might be taken of my situation to exculpate him at my expense. I therefore got permission from the prison authorities and sent a note to Hon. James Lyons requesting him to visit me. That gentleman obtained a permit from Gov. Kemper and came to see me. I requested him to appear at treasurer Mayo's trial to protect me from the injustice I feared would be attempted and he agreed to do so. At this interview he advised me to petition for a pardon which he thought would be accorded in order that I might be used as a witness against treasurer Mayo. But I declined to do it. I had committed no crime myself and I abhorred the idea of doing anything which might imply a willingness to "turn the other cheek."

In order that Mr. Lyons might act advisedly in my behalf, I proposed to put him in possession of the real facts; and to that end offered to read the paper which I had partly written in the city jail before my removal to the penitentiary; in which paper I have transcribed the greater part of the statements contained in his communication to you, Mr. Wise.

At this point Mr. Lyons informed me that he had brought with him Jo. Lane, Esq., a young lawyer who was his professional associate, and proposed to take him in to take part in the interview. I very willingly assented and Mr. Lane was invited in and entered with us upon the business in hand. I then read to them considerable portions of the paper, embracing the material matters. Both gentlemen were impressed by the facts, and advised me to finish the paper, which I did in the form of a petition for executive clemency, and let it be submitted to the governor, and the interview closed with the understanding that I would do so, if I could get the necessary permission and facilities; it being also agreed that Messrs. Lyons and Stern would appear, for my protection, at treasurer Mayo's trial, which was to take place in about ten or twelve days.

On the Sunday before the day fixed for this trial, Mr. E. Carrington Cabell, prosecuting attorney for Richmond city, came to see me and by permission of the prison authorities, conversed with me in private. He informed me that, in his opinion, it would be attempted to exculpate treasurer Mayo at my expense. He desired me to give him information as to the facts so that he could conduct the prosecution successfully. He said that the counsel for treasurer Mayo were well learned, and experienced lawyers, and he needed a full knowledge of the facts for his guidance and assistance. He also hinted to me that a certain witness in the defence, whom he named, would "swear very hard" against me, and advised that if I would comply with his request he would make it to my interest to do so.

In reply I declined to entertain the idea of benefitting myself in the manner indicated. I would tell him nothing except with a sincere purpose to promote the ends of truth and justice. I then told him that Messrs Lyons and Stern would appear at treasurer Mayo's trial to protect me, and referred him to them. Thus the interview ended.

Messrs. Lyons and Stern, however, found no occasion to defend me at treasurer Mayo's trial, for he successfully pleaded *non compos mentis*—and was released and set at liberty.

In consequence of failing health, Mr. Lyons was unable to visit me any more, but Mr. Stern came several times. By his advice and that of Mr. Lyons, who obtained the necessary permission for me, I prepared a petition, a copy of which I submit, as follows:

PÉTITION OF WILLIAM D. COLEMAN.

TO HIS EXCELLENCY,
JAMES L. KEMPER, GOVERNOR,
OF THE COMMONWEALTH OF VIRGINIA. }

Sir.—The humble petition of the undersigned respectfully sheweth as follows:

At the March term, 1874, of the hustings court of the city of Richmond "a true bill" found by the grand jury thereof on each of two separate indictments against your petitioner felony: One for the alleged larceny and embezzlement of certain securities for money of property of the commonwealth of Virginia; and the other for the alleged forgery of a certain public record. At the same term of the said court your petitioner was summarily arraigned; and without adequate opportunity to prepare his defence—without even a single consultation in conference, with counsel hurriedly sent from a distance to conduct his defence, by a friend, (your petitioner himself being then ailing in body, enfeebled in mind, and broken in spirit; with no means, locked up in gaol, and otherwise prevented by circumstances from obtaining the assistance of counsel in the city of Richmond)—was precipitately hurried to trial, thus unprepared and was falsely convicted upon the indictment for forgery:—the prosecution having elected to try him upon *that* indictment in preference to the other (although the said other indictment, the alleged larceny and embezzlement of public property, comprised the real crime, if any crime your petitioner had committed) because, as your petitioner fully believes, it was intended (as afterwards actually done) to use the false testimony of Col. Jos. Mayo jr., purposing thereby to prove a pretended "confession" by your petitioner of the said alleged forgery; whereas, to convict your petitioner of the crime alleged in the other said indictment there was not even the pretence of any evidence—as was soon after fully shown by the virtual acknowledgement thereof on the part of the attorney for the commonwealth, implied in his entering on the docket "*prosequi*" as to that said other indictment.

In accordance with the verdict of the jury, your petitioner was, on the 28th day of March, 1874, sentenced to the harsh and unjust punishment of imprisonment in the penitentiary for a term of four years for the alleged forgery of a public record, namely, the warrant-book of the sinking fund of the commonwealth of Virginia—a crime which your petitioner not only never committed, but which he never in all his life conceived the idea of committing.

But, during the progress of the trial, however, *exceptions* were filed to certain rulings of the court by your petitioner's counsel; his several bills of exceptions were received, signed, sealed by the court, and, at your petitioner's request, (through counsel) the judgment was postponed for *sixty days*. Thereupon, application was made to, and a writ of *error and superseas* awarded by one of the honorable judges of the supreme court of appeals. In this last-named court, the cause came on to be argued on Wednesday, April 22d, and on Wednesday, April 23d, their opinion was rendered, affirming the judgment of the hustings court.

It was about this point of time in the progress of affairs when your petitioner first felt himself sufficiently recovered in bodily health, mental strength, and vigor of spirit to look into the case himself, with a view of ascertaining for himself, the legal points of the prosecution against him. A copy of the record, as certified to the appellate court by Judge Guigon, had been procured for your petitioner, and this he now examined. It was at once, or very speedily, discovered that the appellate court had been misled and deceived in the matter of forming their conclusion. Because: (1.) Their opinion was based upon the representations of the *matters of fact* of the case as the same had been summed up and certified by the *nisi prius* court. (2.) In Judge Guigon's certificate as to what were the facts in the case, as the same had been deposed by witnesses and given to the jury, your petitioner found several *very material points*, represented as matters of fact, which your petitioner knows, and which he could then have *proven—and now prove*—were *not matters of fact at all*, but exactly the reverse. Your petitioner thereupon believed—and does now believe—that *if the real facts had been embodied in Judge Guigon's certificate to the supreme court of appeals, their opinion would have been the reverse of what it was*.

The misfortune of your petitioner was (it was now revealed to him) that his own counsel, having had no conference with him by which they might have obtained the necessary information, had been ignorant of the real facts, and hence had not been prepared, when the case came before the *nisi prius* court, to defend him *there* judiciously.

But your petitioner was advised that there is no remedy at law for such an anomaly or error in the opinion of that august tribunal the supreme court of appeals; and therefore that he had no recourse except to the sovereign power of pardoning which, by their organic law, the people of Virginia have entrusted to the discretion of the chief executive of the commonwealth. With intent, therefore, to seek the relief thus obtainable according to law, your petitioner went to work at once to prepare a petition to Your Excellency; purposing in the said petition

late the truth, the whole truth, and nothing but the truth of all the matters touching his unhappy case, and to prove his statement true upon every point which might admit of question. For your petitioner did then believe—and does now believe—that if full knowledge of all the facts were in Your Excellency's possession you would not hesitate one moment, but would instantly afford your petitioner at least the relief of his personal liberation by exercising in his behalf the sovereign attribute of ordoning with which the good people of Virginia have empowered you.

As has just been stated, the order of the court postponed the judgment for sixty days. Although before the expiration of that period the opinion of the appellate court was rendered, yet the order of the court which tried the case remained unchanged, and was itself, in fact, affirmed in connection with the judgment. Your petitioner therefore held—and still believes—that he could not lawfully be subjected to the punishment to which he had been sentenced until the time indicated by the order of the court. This postponement of the judgment by order of the court had in fact before the force and virtue of a short respite to the benefit of which (albeit perhaps not thus intended) your petitioner had a right he thinks. With this view in mind, your petitioner proceeded in the preparation of his said petition, confidently expecting to complete the same before the expiration of his respite.

It was your petitioner's purpose to publish his petition as well, as to present it to Your Excellency, because he had become aware that public sentiment had been atrociously perverted to his enormous wrong and injury, by means of monstrous falsehoods published in the city papers, and otherwise disseminated, and he wanted the public to know the real facts, through your knowledge of which, as he should prove the same to you, he fully believed and confidently expected that Your Excellency would pardon him without delay.

The order of the court postponing the judgment for sixty days was entered of record on the 1st day of March; the respite, therefore, would not have expired until the 28th of May. But on Wednesday, the 6th of May at 5 o'clock A. M. the gaoler came to your petitioner's cell in the gaol and notified him that at 9 o'clock that same morning he must be ready and would be removed and conveyed at once to the penitentiary. This gaoler had previously promised your petitioner that in the event of his removal to the penitentiary at any time prior to the 28th of May (your petitioner having claimed his right to the respite implied in the order of the court and contested against any earlier removal) he would, at least, give him notice several days beforehand; and now, in notifying your petitioner of this most summary removal, he stated that he had received AN ORDER to that effect the previous night after nine o'clock, when your petitioner had been locked up for the night. He then handed your petitioner a letter that, he said, had been sent the previous evening. It was a very friendly letter from a reporter for a city paper stating that there was "a report current" that your petitioner was "preparing a succinct statement of sinking fund matters," and proposing to publish the said "statement" in his paper. That there was, indeed, such "a report current" in the city, your petitioner had also been informed the previous afternoon (Tuesday, the 5th of May) by a certain gentleman, well known to your petitioner as an intimate and confidential friend of Col. Mayo. This gentleman visited your petitioner in the gaol on that occasion (he had previously called at the gaol for the same purpose, but failed to state his business because of interruption) as the bearer of a proposition, (or what was virtually a proposition) to the effect that if in the "statement" which it was reported your petitioner intended writing he would so represent affairs as to exculpate Col. Mayo that then certain very influential friends of Col. Mayo would use their great "influence with the governor" to secure for your petitioner Your Excellency's gracious pardon. Your petitioner refused to entertain the "proposition."

In obedience to the gaoler's order your petitioner now made hasty preparations for his premature removal to the penitentiary, though still protesting against it; and at 9 o'clock that day, accordingly, your petitioner was conveyed to the penitentiary, therein incarcerated, and subjected to the hardships and humiliations and degradations of a convict's life, all of which he has been compelled continually to endure ever since. Thus, twenty-two days before the order of the court was issued, it to be done, was this penal servitude imposed upon your petitioner for an alleged crime which he never committed. If the judgment had been DEATH instead of this imprisonment which your petitioner would then willingly have preferred) it would have been as lawful to hang him before the day appointed by the court as it was to imprison him in the penitentiary. What especially embittered this premature imprisonment was that it deprived your petitioner of only opportunity he had had to state and prove the real facts in his unhappy case. He is firmly persuaded, and has ever been, that if, before he left the gaol, he could have completed and submitted to Your Excellency the "statement," WITH THE PROOFS, of all the facts which he was preparing in a petition for executive clemency that Your Excellency would have pardoned him at once, and he would never have been conveyed to the penitentiary at all. Moreover, this "statement" would have established your petitioner's true defence—the counsel sent from a distance in haste to defend him are, to this day, ignorant of the real facts, and, in their ignorance of the real facts, they, unfortunately, attempted a fatal, false defence—and the publication of this

true defence, namely, the real acts of the case and the proofs thereof, would have disabused the public mind of the atrocious falsehoods by which it had been perverted to his enormous injury and unjust execration. But this unlawful premature incarceration in the penitentiary, like a burial in "a living grave," effectually frustrated all your petitioner's purposes, and expectations of the description indicated; for he was forthwith set to manual labor as a convict, the manuscript of his petition, which he had partly written in his cell before leaving the gaol, and which he carried on his person when removed to the penitentiary, was taken from him, and all facilities and opportunity for the execution of his purpose were denied him.

After he had been in the penitentiary some months, however, his renewed request for his manuscript was complied with, and then (as a notable indulgence for exemplary good conduct) he was not prohibited from writing at such rare opportunities as he could glean from the hours allotted to needful rest and sleep; but with neither time nor facilities afforded him, and upon his pledge of honor that when the petition should be completed it should be forthwith delivered to the superintendent without letting any other person, without his express permission, even read it. Thus hampered, incommoded and restricted, your petitioner has, as well as he could, proceeded through many weary months in the preparation of his petition; sometimes not being able to write a single line for several weeks, and rarely ever more than a few pages at a time, sometimes in physical pain, and always with anguish of spirit; but with resolute purpose, nevertheless, to continue the task to its completion.

And he had completed it, or nearly so, when, some weeks ago, he learned a fact which materially altered the aspect of certain matters connected with his case.

This fact was that Col. Mayo, through whose false testimony alone your petitioner was convicted—for there has never been a syllable of evidence adduced connecting your petitioner with the fact alleged to be a forgery of a public record, save only the pretended "confession" which this witness falsely deposed; and it was upon that charge alone your petitioner has been tried, was convicted, and for which he is suffering now this unjust punishment—had been discharged from the lunatic asylum of which he had been an inmate since your petitioner's conviction; had been himself indicted, and would speedily be tried for the alleged larceny and embezzlement of the public property of which your petitioner had been formerly accused. Deeming this fact important to the interest of his cause, and vaguely apprehending that some advantage might be taken of his imprisonment and enforced silence to exculpate Col. Mayo at your petitioner's expense, he humbly besought the superintendent for and obtained permission to write a note to an eminent member of the Richmond bar, formerly a friend to your petitioner, entreating him for his advice. This eminent lawyer, (having first obtained Your Excellency's kind order directing the superintendent to allow it,) came and held an interview with your petitioner. The superintendent kindly permitting it, your petitioner exhibited to this eminent lawyer the petition he had prepared, though it was still not quite complete. After the reading of portions of it he advised your petitioner to finish the work as soon as possible and let it be at once submitted to Your Excellency; and so your petitioner determined to do.

But, a few days after this, your petitioner was informed that in the matter of the prosecution against Col. Mayo, a jury had adjudged, by verdict, that he is now still *insane*, and that he is *insane* during the whole period, dating far back anterior to and including the date of the alleged larceny and embezzlement of the public property for which he was indicted, and embracing the period of your petitioner's trial, when, upon his false deposition, your petitioner was convicted of a crime which he never committed. In your petitioner's apprehension the materiality of this new development could not be over-valued; for it was, in fine, the disclosure and establishment in authentic legal form, of a most material fact hitherto not legally affirmed and never suspected by the jury at your petitioner's trial, which altogether altered your petitioner's case, affording abundant legal proof for demonstration beyond dispute that your petitioner is not a guilty criminal, but the unfortunate victim of a madman's vagaries.

About the same time when your petitioner learned the verdict of the jury affirming that Col. Mayo is and was *insane*, he was informed by the superintendent that, (at the request of the same eminent lawyer whose kindness in visiting and advising your petitioner has been gratefully mentioned) Your Excellency had graciously ordered your petitioner's exemption from labor two days, with permission to employ the time in finishing his petition. But at the same time your petitioner was informed that Your Excellency's public engagements are such, and will some time to come continue to be such, that you cannot devote that time and attention to your petitioner's case which are necessary to the careful reading and consideration of his petition and the examination of the proofs which accompany it. For the petition is, of necessity, unusually long one, covering over six hundred pages.

But every hour of delay to consider your petitioner's case is a prolongation of the hard and humiliations of his present situation which if Your Excellency's engagements permit you to examine the proofs he would prove to you ought never to have been inflicted on him at all. In view therefore of this exacerbating fact, and with the hope to obtain a more speedy

release from his sufferings by presenting his case in such a shape as to meet the requirements of Your Excellency's present convenience, and thereby merit your immediate attention, your petitioner has used, or rather is now using, in the preparation of this present paper, the opportunity kindly allowed him by Your Excellency's gracious order exempting him from labor for two days.

Briefly now, therefore, if Your Excellency please, your humble petitioner begs leave most humbly to submit as follows:

That, whereas, it has been juridically decided that Col. Jos. Mayo, jr., *is a lunatic*, and that he *was a lunatic* long before, at the time of, and has been ever since your petitioner's trial; and, whereas, it is well known to Your Excellency that the said Col. Jos. Mayo, jr. was a material witness for the prosecution against your petitioner, and that, in fact, apart from his deposition there was not a word of evidence adduced by which your petitioner could have been connected with the crime of which he was convicted, and for which he is now suffering a degrading punishment: Now, therefore, that *these facts alone* afford quite sufficient grounds on which your petitioner may confidently, but submissively, beseech Your Excellency for pardon and liberation.

All of which will appear the more cogently conclusive in the light of further facts as follows:

Because, no hint or suggestion of this witness's *insanity* was given to the jury at your petitioner's trial.

Because, no conference or consultation between your petitioner and his counsel hastily sent from a distance having been held, they did not seek to impeach this witness's credibility as they should have done, for the reason that they were not informed that his testimony was *false* as they could have been had they obtained your petitioner's own statement. His *insanity*, your petitioner thinks, would likely have been developed at his examination if your petitioner's counsel had exposed the *falsehood* of his testimony, as they could have done had they been in possession of *the real facts*.

Because, the juridical investigation which ascertained this witness's *insanity* was the preliminary step to *his own trial* upon an indictment against him for the *one crime*, to *conceal which* could have been the only *motive* of the *other crime* of which your petitioner was convicted *upon his testimony*; if, therefore, your petitioner was guilty of anything *it could not have been more than being* his ACCOMPLICE. Your petitioner is advised that the rules of evidence exclude the testimony of *accomplices* unless the same be sustained by strong *corroborative evidence*. In this case *there was no corroborative evidence whatever* and this witness's testimony, therefore, *should have been excluded whether he was INSANE or not*.

Under the peculiar circumstances of the case Col. Mayo was allowed to testify who was himself subsequently indicted for *the real crime*, whilst your petitioner was locked up in gaol, made to hold his peace, and not allowed to testify: although, if guilty of anything, it could not possibly have been more than being Col. Mayo's *accomplice*. After nearly two years of the hardships and degradations of penal servitude which everybody now knows to have been *unjust*, cause the judgment against him was founded solely upon the testimony of a *madman*, your petitioner is now informed that there is no proceeding at law by means of which relief may be ordered him through the process of any judicial tribunal; and that, therefore, relief can come to him in no other way than by the exercise in his behalf of the great and munificent power of pardoning which the people of Virginia have entrusted to Your Excellency's discretion.

To the end that this blessed relief may be the speedier in its coming; that Your Excellency may not have to wait to find leisure and opportunity to examine accumulated proofs and demonstrations of the monstrous wrongs your petitioner has endured, but extend your gracious hand at once for his relief, your petitioner now humbly submits this epitome of his case in lieu of the more lengthy and elaborate *memorial* of which mention has been made. Herein are related *as enough*, he hopes and thinks, to incline Your Excellency to a favorable hearing of his prayer for pardon and liberation.

Your petitioner is advised that *if Col. Mayo had been adjudged a lunatic BEFORE HE TESTIFIED*, law, propriety, a just consideration for the safety of society, and every safe-guard against the fallibility of human testimony *would have excluded him from the witness-stand*. Or, if *in a brief interval*, he had been allowed to testify it would have been *with notice to the jury* that he was subject to mental aberrations, and *this fact* would have been a *material matter for their consideration*. In the light of recent developments your petitioner would humbly ask: Do not the same law, the same propriety, the same just considerations for the safety of society, and the same safe-guards against the fallibility of human testimony now demand that the enormous wrong which has been done to your petitioner through Col. Mayo's then unsuspected testimony should be *redressed* as far as it can be done, in the only way in which it can be done now, since *facts* cannot be brought before any judicial tribunal, namely, by the gracious interposition of a hand which holds the munificent power to pardon—a sovereign prerogative which the people of Virginia have delegated to Your Excellency?

To Your Excellency's sense of JUSTICE, therefore, your petitioner would appeal as well as

to the sentiment of mercy and human kindness which no doubt, inspire your heart when exercising your high power as a Ruler into whose hands fortune has committed the fate of a fellow creature.

In conclusion, your petitioner deems it only proper (and due to himself, indeed,) to say that he harbors no bitter feeling against *the witness* through whose false testimony he has been made to suffer so much wrong. Your petitioner's view is, and has been all along as follows: At the time when this unfortunate gentleman thus falsely testified he was then *insane*—or he was *not*. If he was *insane*, that fact covers him with the panoply of moral irresponsibility which exempts him from accountability to God and consecrates him against the animosities of all mankind. If he was *not then insane* it is certain that his *insanity* must have succeeded his false-swearing with the promptness of a *judgment from Heaven* itself, and in view of it your petitioner and every human *creature* can only bow in solemn awe as in the manifested presence of *the omniscient Judge* whose Arm is not shortened, and whose Hand is as omnipotent *now* as it was when, in Her Wrath, it fell upon Ananias and Sapphira.

Finally, it is a heart-sickening reflection to your petitioner that, no matter how kindly Your Excellency may be disposed towards him, it is not in your power to afford a full measure of *redress* for all the *wretchedness* he has been made to suffer so unjustly—and is still suffering. At the best it is only in Your Excellency's power to remit the remainder of the punishment to which your petitioner has been sentenced and restore him to liberty at once. It is not in the scope of executive clemency, nor in any earthly power, to blot out even from his own remembrance the weary days and nights your petitioner has passed in the misery and wretchedness of a convict's life;—nor to shed light for the future upon the night of sorrow and the impenetrable gloom which attend a career that has failed!

The boon of *personal liberty* which your petitioner craves at Your Excellency's hand can only enable him to re-enter the arena of life cast down by clinging memories of once promising prospects and harassed by humiliating reminders of fortune's catastrophe. At the best his future on this side the grave will still be fraught with the curse of a blighted career, and the sorrowful but unavailing, yearnings of a life which his own follies have wrecked before accomplishing a good in the world; and he can only hope for that tranquillity which is the happiness of the humblest station.

Yet, there are *duties in life* which he feels that he owes to those who hold to him by the ties of consanguinity and affection; and it is *for their sake*—especially his aged parents whose span of life is fast drawing to a close—it is *for them and in their name*, no less than his own, that your humble petitioner now submits this humble petition that Your Excellency will exercise for his pardon and liberation *the sovereign clemency of the PEOPLE OF VIRGINIA*.

And your petitioner, as in duty bound, will ever pray, etc., etc.

WILLIAM D. COLEMAN

This petition was duly submitted to Gov. Kemper, for me, by Hon. Jarvis Lyons and Jo. Lane Stern, Esq. At, or about, the same time there were also presented to him several petitions in my favor, numerous signed by the people of Richmond, and of Danville, and of Pittsylvania county. I have been told, too, that distinguished gentlemen in various parts of the state wrote letters to him unsolicited, in my behalf. He referred the petition to Judge Guigon, who kept it for some days and then returned it with an argument against it. As I had perused the summary proceedings of the court by which my conviction was made possible, it was but natural that Judge Guigon should seek to justify his action on the premises—and this, I think I may be allowed to believe, was expected by the shrewd a lawyer as Gov. Kemper. Upon this argument of Judge Guigon (seemingly so) the governor decided against me, and on the 1st of January 1868 rejected my petition. On rejecting it, he allowed the newspaper reporters to publish a lengthy paper purporting to be his "reasons" therefor; and, as if to fortify the same, he allowed them to publish, also, the prosecuting judge's *argument* against me.

Now, the constitution, while clothing the executive with the munificent power of pardoning, takes care to protect society against its improper exercise by requiring that in each case in which the governor *exercises* this power he shall transmit *to the legislature* a statement of the case. But no such requirements were made in case of *refusal* to exercise the power; because, it was never dreamed

at any governor would ever refuse a meritorious case, especially when demanded by the general public sentiment. And this was the first time, I believe, in the story of the commonwealth that any governor ever undertook, by an *ex parte* publication, in the public prints, to inspire public sentiment against a helpless prisoner.

On being informed of this publication, I got Mr. Stern to go to Gov. Kemper and ask that the text of my petition might also be published; for, as everything that could be said *against* me had been published, I thought it only fair that what could be said in my favor should be published, also. But in reply to this reasonable request only a wrathful refusal was returned. With the hope to remove the reasons "on which my first petition had been rejected, I then prepared another, proposing certain *conditions* as the basis for the governor's favorable action in my behalf. At my request this was submitted to Gov. Kemper by Hon. James Lyons, Mr. Stern being absent from Richmond just then, as I was told. The following is a copy of this second petition in which the proposed *conditions* are fully stated:

PETITION OF WILLIAM D COLEMAN.

—FOR—

—LIBERATION UPON CERTAIN SPECIFIED CONDITIONS.—

HIS EXCELLENCY,
JAMES L. KEMPER,
GOVERNOR OF VIRGINIA. }

* * * * *

The purpose of the present paper is to represent that upon reading Your Excellency's stated reasons for refusing your petitioner's relief, it appeared to him that there is a practical remedy by which the difficulties in the case may all be obviated; and this he wishes to propose and pray for its adoption.

Your Excellency affirms as follows: "Stripped of all technicalities, the punishment of the petitioner must be considered as resulting from the larceny of public funds, in connection with the alteration of an official record, alleged to have been done and designed to conceal the larceny. No attempt will ever be made to renew the indictment for that larceny; but if this be not so, and if any additional sentence were procured in the premises, the Executive would promptly interpose the pardoning power to arrest it."

Your petitioner, therefore, is now given to understand that he is undergoing punishment for alleged offences, which by statute are classified as separate crimes of different degrees of gravity, namely, *larceny* and *forgery*; of which the former is the graver. Your petitioner avers although he was indeed, *indicted* for both, he has, as yet, been *tried* for the latter only. Your Excellency must be well aware that in any criminal prosecution, whatever else the evidence may show to prove that the accused person may have committed, whether it be treason, murder, arson, or any other crime, he may not *lawfully* be punished, either directly or indirectly, for anything else than what is charged in the indictment on which he is tried, until he shall have been duly tried and convicted of that something else also. If this were not so, a person might be convicted of larceny and hanged for murder without being tried for murder.

Your petitioner has now served out more than half the term of imprisonment for his punishment by the jury at his trial in their verdict ascertained. If the two crimes were of equal gravity, surely it would be conceded that he has expiated the alleged forgery, even if guilty of the alleged larceny is the graver crime, and the alleged forgery, therefore, has been overruled. The remainder of his punishment must, therefore, be solely on account of the alleged larceny of public funds. But he has never been even arraigned for this alleged crime, much less convicted of it, and, therefore, his punishment for it is altogether unlawful.

Logically, Your Excellency knows that after your petitioner shall have served out his full term of imprisonment, if he is in reality guilty of the alleged larceny of public funds, he must then be tried, convicted, and punished for it. Your Excellency has, indeed, suggested that no attempt will ever be made to renew the indictment for that larceny; but Your Excellency will, no doubt, admit that that depends upon the views of the grand jury and the public for the commonwealth: They may think that if there be probable cause to believe

that a person has committed a crime for which he has never been tried, he ought to be prosecuted and, if guilty, punished for it. Your Excellency has, indeed, virtually promised that "any additional sentence were procured in the premises, the Executive would promptly interpose the pardoning power to arrest it;" but if Your Excellency will compute the time, you will find that your term of office will have expired before you will have an opportunity, in that event, to interpose the pardoning power: Your successor may not entertain Your Excellency's view if a jury deny the plea of *autrefois convict*, the governor might feel hardly justified in pardoning on the grounds of prior punishment.

Moreover and especially, suppose your petitioner, after serving out his present term of imprisonment, shall be then tried for the alleged larceny of public funds, as he certainly may, and suppose he should be *acquitted*, as he has no doubt he would be: What remedy would have for this then proven unjust punishment?

Your petitioner infers that he need not hope to change Your Excellency's conclusion not to pardon him upon the grounds assigned in his said rejected petition; but the measure of relief for which he now entreats Your Excellency will not contravene that conclusion, and he trusts will obviate Your Excellency's objections. It is as follows:

Your petitioner now humbly prays Your Excellency to pardon him UPON THE CONDITION ~~he forthwith submit himself to the officers of the law, duly to be tried and lawfully dealt with for~~ *alleged larceny of public funds.*

It would be but only just to stipulate that the same indictment against your petitioner for the alleged larceny, should be renewed, *totidem verbis*, which was pending at the time of his trial for the alleged forgery. But such a stipulation would reduce the proposed condition of his pardon to a nullity; because, as Your Excellency will be, no doubt, convinced if you will only read the said indictment in the light of facts now generally known, no grand jury *now* could be prevailed upon to return that indictment "a true bill."

By two years of penal servitude your petitioner has fully expiated the alleged forgery, if guilty of it; although he would not have been convicted, as Judge Guigon has duly informed Your Excellency, "in the absence of Mayo's testimony;" and Mayo was not prosecuted because he was proven insane—one of the evidences of his insanity being, as Gen. Johnson testified, that he was, at, or about, the period of your petitioner's trial "incapable of making a statement of facts."

And now your petitioner only asks that Your Excellency will interpose your high and beneficent power of pardoning for his relief from the further infliction of this punishment on account of the alleged larceny of public funds, until he shall have been duly tried and lawfully convicted of that alleged offence. He only asks, in all good faith, that he may have a fair trial upon the real substance of the charge that he has stolen funds belonging to the state, before being further punished for that alleged offence. He only desires substantial JUSTICE and humbly prays Your Excellency to accord it.

And your petitioner, as in duty bound, will ever pray, etc., etc.

WILLIAM D. COLEMAN

A few weeks after this petition was submitted to Gov. Kemper, I was informed that he would not favor it. Mr. Stern came to see me and told me that in a interview he had just had with Gov. Kemper, he had suggested to him to withdraw this petition and held out the intimation that if this were done he would favorably entertain a new proposition for my relief. By Mr. Stern's advice I consented to its withdrawal. On obtaining possession of it afterwards I found it ended as follows:

"GOVERNOR'S OFFICE, 21st February, 1881

"Respectfully referred to Judge A. B. Guigon. While I am reluctant to trouble Judge Guigon again with this matter, yet it seems to me that this petition to renew the proceedings in the premises in his court should be examined by him. I can see no proper ground showing executive clemency unless Judge Guigon can suggest it.

J. L. KEMPER

"HUSTINGS COURT, February 21st, 1881

"Of course I do not propose to try Coleman again, and can only account for his new proposition by the fact, natural enough in his circumstances, that, in brooding over his case during the weary days and nights of his imprisonment, his imagination gets the better of his common sense.

Very respectfully,

A. B. GUIGON

Now, I respectfully submit it to you, Mr. Wise, or to any other fair-minded man, that the "common sense" which this proposition contained was the very characteristic of it. It seems to me that my "imagination" if at all at fault was only so in respect of attributing to Gov. Kemper sincerity in assigning his published reasons for rejecting my first petition!

A number of visits were paid me by Mr. Stern while Mr. Lyons and he were waiting for me in the presentation of my case to Gov. Kemper, and in one of these visits he asked me to explain an incident which he related but did not understand. He said that Mr. S. Sprigg Campbell had procured a number of signatures to a commendation to the governor in my behalf, but had come to him afterwards and desired to withdraw the same, alleging as his reason that he had heard that, if released, it was my purpose to "throw mud" (as he expressed it) by making publications through the newspapers. I told Mr. Stern that I knew no explanation unless it was that I had said that I intended to publish *all the facts* as soon as I could, and Mr. Campbell might have heard that I had said so, and knew that among the facts were the exchanges of "consols" for "peelers" in which he had participated. At Mr. Stern's request, I then related the particulars of these exchanges. He was very attentive and I afterwards remembered that he said this was the most *interesting* interview he had ever had with me.

For some time after this Mr. Stern continued to visit me, at intervals. He had several interviews with Gov. Kemper and generally communicated to me the substance of what passed during the same. In one of his visits he told me that he had given Gov. Kemper an intimation of what I had related to him touching exchanges of "consols" for "peelers," and that the governor had shown an earnestness to hear the particulars, and had hinted that he would pardon me if I would make them known; his idea being, as I understood from Mr. Stern, that it would lead to the implication of certain parties. Mr. Stern urged me to make the revelation and counselled me that by that means I could obtain release from prison, and in his opinion by no other means. When he told me that he had given Gov. Kemper this intimation about the "exchanges" of "consols" for "peelers," I was surprised, because, when I told him of them, it was with no intention that he would repeat it to anybody. My idea in telling him was to give him the only explanation I could conceive for Mr. Campbell's remarkable conduct towards me in the instance of which he (Mr. Stern) had informed me; although I intended to publish all the facts myself whenever I was at liberty to do so. But when he informed me that he had given Gov. Kemper this intimation and urged me to make the revelation as suggested by the governor, in order to obtain my release, although surprised, I listened attentively and considered his arguments carefully. And then I absolutely refused to do anything of the

But Mr. Stern renewed his exhortations with further arguments; and then I refused to take the subject under maturer consideration, still telling him, however, that I was altogether averse to the idea, and that I did not believe it would accomplish anything. I knew, indeed, that there was nothing criminal in these "exchanges" of "consols" for "peelers," and that my evidence about them would not tend to criminate the particular parties whom I believed the governor specially desired to see implicated.

Shortly after this, I was visited by several members of the legislature, former friends of mine, several of whom told me that they were on intimate terms with Gov. Kemper, and had repeatedly approached him in my behalf, but always in vain. One of these gentlemen now told me that Gov. Kemper had informed him of what Mr. Stern had intimated, as mentioned above, and urged me to make the revelation. He gave me a graphic account of an interview he had had

with the governor in which the latter introduced the subject, stated what Stern had told him, and added that "it would be a good thing to get some of these respectable gentlemen and arraign them in a criminal court," or words to that effect. From this eagerness of the governor I was advised that compliance with his suggestion would certainly secure my release. I replied that I was sure the governor had an exaggerated idea of the information I could give; that I had committed no crime myself and therefore could not implicate anybody else as accomplices in any crime. The only *crime* I could prove was that of perjury which had been committed at my trial, but not by the parties to whom Governor Kemper was probably referring.

Soon after this Mr. Stern came to me again and renewed his exhortations to comply with the governor's suggestion; informing me, too, that Mr. Lyons sent me the same counsel. Thus prevailed upon, I agreed to make an effort in the direction indicated, and gave Mr. Stern my views as to the manner of making a petition. He went then, at my request, to consult Mr. Lyons on the subject. The next day Mr. Lyons sent me the draft of a petition to the governor prepared in accordance with my views as communicated to him by Mr. Stern. I transcribed the same, signed it, and returned it to Mr. Lyons to be submitted to the governor. The following is a copy of it:

WILLIAM D. COLEMAN'S THIRD PETITION.

TO HIS EXCELLENCY,

JAS. L. KEMPER,

GOVERNOR OF VIRGINIA.

Sir:

The petition of William D. Coleman respectfully sheweth that he is now in the penitentiary of Virginia, under a verdict and judgment of the hustings court of the city of Richmond upon indictment charging him with the forgery of a certain book which has been adjudged to be a public record. In point of fact, your petitioner was guiltless of the offence of which he was charged, and yet he was found guilty of it. His case presents several remarkable features, but the most remarkable is that if he was guilty of any offence at all he was the accomplice of Jos. Mayo, the then treasurer of the commonwealth of Virginia, who is now at large and has never been tried, having been found, according to law, upon his arraignment, to have been a lunatic at the time the alleged offence was committed, and, indeed, during his whole term of office as treasurer of Virginia; and has been committed to the supervising care of his father.

While your petitioner does not mean to make any imputations upon the court or counsel who tried him, he is yet constrained to say that if his case had been fairly and fully presented to a jury who tried him he must have been acquitted, for he can demonstrate his innocence to any tribunal.

The next remarkable feature of his case is that he was convicted upon the testimony of Jos. Mayo, who has since been adjudged to have been a lunatic. It is true that the court decided upon the testimony then offered upon the competency of the witness that the witness was sane; but your petitioner is advised and insists that under the law of Virginia which directs that the defence of insanity is set up for a party charged with a crime, he shall be tried upon the question of lunacy before a special jury, and, if found to be a lunatic, discharged from all punishment, and therefore the judgment of the court affirming that Mayo was sane and not a lunatic is incorrect and was not properly rendered, because Mayo was under indictment at the time the final judgment was rendered against your petitioner, and therefore his sanity should not have been tried as an ordinary question of competency is tried, but the special jury which did try the question of Mayo's sanity, or some other, should have been empanelled to try that question, and if that had been done the result has shown that your petitioner would not now be in the penitentiary.

As the case now stands, your petitioner is now in confinement by force of the testimony of a man who has been adjudged by an irreversible sentence to have been a lunatic at the time he testified against your petitioner.

This cannot be the law, or if it is, it ought not to be, for it is not the law in any other State that a lunatic shall be a competent witness to convict any man of crime; but your petitioner is without redress except in the clemency of the executive, and therefore, having now served

emplary manner, for a time longer than the minimum confinement fixed by law to his imputed crime, he prays that he may be pardoned; and when his capacity to testify is restored he will fully and freely and truly all that he knows about the alleged robbery of the treasury or the embezzlement of its funds, protesting as he does that he has never pocketed a dollar of the public money.

And your petitioner, as in duty bound, will ever pray etc., etc.

WILLIAM D. COLEMAN.

Subsequently, I was informed that this petition was submitted to Gov. Kemper, but it received no consideration, and the subject was dropped for a time.

Several weeks afterwards, however, Mr. Stern came to see me again, manifesting a warm interest to obtain my release from prison; as, indeed, he and Mr. Lyons had done all along. He was aware of the extremely distressing nature of my situation, and was sanguine that I would be relieved if I would comply with the suggestion Gov. Kemper had made to him and he had repeated to me. He therefore again exhorted me to make "a full statement," as suggested by the governor, of everything I knew in relation to the affairs of the sinking fund, and seemed so confident that it would secure my release that I yielded to his persuasions. He had informed me that Gov. Kemper's suggestion was that I should write out the "full statement" indicated and send it to him, or make it to the attorney for the commonwealth for Richmond city, or to the judge of the hustings court. In my opinion, it was most proper to make it to the attorney for the commonwealth, and so informed Mr. Stern. It was accordingly so agreed.

The next day, I think it was, certainly not more than a day or two later, Mr. Carrington Cabell, then the attorney for the commonwealth for Richmond city, came to see me; having been requested to do so by Mr. Stern. I offered to make the desired communication to Mr. Cabell, then and there, orally; or to write it out, as he preferred. He said he preferred to have it written out. I agreed to do it at once, and he then terminated the interview, which did not last as long as ten minutes. Before leaving me, Mr. Cabell told me that the communication I would make to him, would be received by him as confidential. My expectation was that he would examine my communication and advise the governor whether he would pardon me upon it or not. If pardoned it would be proper to publish my statement; but if not pardoned I had no idea that the least publicity would be given to the subject. With this understanding I wrote out and sent to Mr. Cabell, through Messrs. Lyons and Stern, in confidence, a statement embracing the material facts in my knowledge touching the affairs of the sinking fund; the said statement being made, in great part, in the same language in which I have stated the same facts hereinbefore in this communication to you, Mr. Wise. I also sent him a statement, in the nature of a lawyer's brief, pointing out the untruthfulness of the second auditor's testimony at my trial, just as I have exposed the same hereinbefore. Along with these I also sent the original of the account current rendered me by Messrs. Parker Campbell & Co., (a copy of which is printed hereinbefore, at page 11,) and also a letter and several notes to me referring to transactions between that firm and myself touching the affairs of the sinking fund.

As I had made my communication to Mr. Cabell in confidence, I was very much surprised a few weeks later to learn that the matter had been mentioned in the public newspapers (which I was not permitted to see) and had occasioned considerable scandal in Richmond. I was told by a friend that it was spoken of in the Richmond *Enquirer* (of which I had formerly been, for nearly four years, the editor) as "Coleman's confession"—that phraseology being employed, in my opinion, to convey to the public an idea upon the subject exceedingly unfavorable and atrociously unjust.

Some weeks afterwards Mr. Stern came and told me that this effort for release had failed, and confessed that my judgment as to the governor's disposition towards me (as I had expressed it to him) was more correct than his. I told that Mr. Stern had been deceived in the hopes held out to him for me, and told him that I believed the object had been to injure me in public opinion. He assured me that both he and Mr. Lyons had kept the matter entirely secret. We were surprised, as I was, at the publicity given it. At my request Mr. Stern promised to get all the papers back from Mr. Cabell, which I had sent him. It was, however, more than a month after this before he succeeded in getting them back, and when he brought them to me the letters and notes referring to transactions between Messrs. Parker Campbell & Co. and myself were missing. Mr. Stern said that he had learned that all the papers after being examined by Mr. Cabell, had been in Gov. Kemper's hands for a time, and afterwards in Judge Guigon's. On applying to the latter for them he was told that they had been mislaid but would be "hunted up." When, after numerous applications, Judge Guigon gave them to him, the letter and notes had disappeared and could not be produced.

On getting these papers back I asked Mr. Stern to take them and, together with the petitions, I had sent Gov. Kemper, (of which Messrs. Lyons and Stern, as my counsel, had copies), give them to the newspapers for publication in St. Louis. I wanted the public to know all the facts and considered that I had the right to make them known through my legal counsel. But Mr. Stern said his personal relations with the governor were very pleasant and might be disturbed were he to make the publication I desired. I made no further request and never saw Mr. Stern any more until after my release from prison.

Towards the close of the year 1876, after I had endured the misery and wretchedness of my imprisonment two long years and a half, I conceived the idea of making one more effort for relief by craving a personal interview with Gov. Kemper to present my case to him myself; for I fancied that face to face I could convince him that justice and fairness demanded my release. He had previously granted personal interviews to other prisoners, even visiting the prison himself for the purpose, and I hoped he would not deny me what he had permitted to others. Accordingly, through the acting superintendent of the prison, I asked him in writing, the favor of such an interview. But Gov. Kemper refused to permit to see him. I was, however, graciously permitted to write him a letter; and the following is a copy of it:

LETTER FROM WILLIAM D. COLEMAN TO GOV. KEMPER

THE PENITENTIARY,
RICHMOND, October 31st, 1876

HIS EXCELLENCY, THE GOVERNOR.

Sir:—The acting superintendent of the penitentiary has notified me that, on yesterday, delivered a note which, some weeks since, I was permitted to write begging to be allowed to appear in person before Your Excellency in my own behalf. He informed me that Your Excellency said that public engagements will not allow of your giving the desired permission, but I may reduce what I have to say to writing and it will be considered.

In praying for a hearing *viva voce* , my idea was that there might be some points in my case I have to say on which it might be Your Excellency's pleasure to hear the details, and I could state them in that manner most readily and satisfactorily, catechetically. I gladly and gratefully embrace the permission to write and, with a hope of a favorable result, now humbly beg Your Excellency's consideration hereof.

At the outset, I deem it due to that ingenuous frankness which I mean to manifest in all I have to say, to declare that my objective point herein and hereby is simply a speedy release from imprisonment. There remains now only about a year of the term of imprisonment to which I was sentenced, but I desire to save, if I can, this modicum of valuable TIME from the waste

life and devote it to the needful work of repairing that disheartening wreck as far as possible. Besides, there are peculiar circumstances, of a painfully delicate nature, some of them, in view of which I would seem callous to the holiest of human emotions and be false to the strongest of earthly ties, if I failed to make every proper effort possible to secure my speedy release for the sake of those dear ones whose lives are by nature and affection, intertwined with mine.

It is necessary, I think, to premise a statement as to certain circumstances connected with my case, some of them at the time of trial and some subsequently. And of these, as I shall state them, I humbly beg Your Excellency's consideration in conjunction with what I have theretowards to say.

The indictment on which I was tried alleged the forgery of a public record and specified the offence as the alleged erasure of the numeral "1" in a certain entry in the warrant book of the sinking fund with a fraudulent intent. In proof that I made the said erasure no evidence whatever was adduced, save only that of Col. Mayo, who, directly against the truth, deposed that he had confessed the fact to him. The *nisi prius* judge who presided at my trial has stated in a published letter that I would not have been convicted "in the absence of Mayo's testimony on this point." At my examination at the police court Gen. Johnson was acting as volunteer counsel for me, and to him I pointed out incontrovertible evidence, in the nature of a physical fact, corroborating my declaration that Mayo's testimony was atrociously untrue. But just before the day fixed for my trial Gen. Johnson retired from my defence, alleging his need to do so in order to exculpate himself in a certain transaction mentioned in connection with my case, but which appeared in evidence at my trial, I was not a party; though Col. Mayo was. With Messrs. Burnoy and Barksdale who conducted my defence in court, (they, in the emergency of Gen. Johnson's desertion having been sent in haste to my assistance by a friend at Danville,) I have never had any consultation about the merits of the case, and they remain to this day in utter ignorance of the real facts. I was in a reduced condition of body, mind, and spirits, almost as helpless as a child, and in that condition was forced to stand my trial, wholly unprepared. In my ignorance of the real facts, my counsel made no real *defence* in my behalf, but only attempted to secure my exemption from the penalty of the law by an ineffectual "legal stratagem;" and the only question contested by them was not whether I was *guilty* of the fact charged in the indictment? but it was whether the fact charged in the indictment was an offence against the law? Not whether I had made an erasure in the warrant book of the sinking fund with intent to defraud the commonwealth? but whether the said warrant book was a *public record*, or not? If I been in a condition capable of directing my own defence, I have no doubt I would have been acquitted; as I certainly would have been had my counsel been in possession of the real facts and conducted my defence accordingly.

Immediately after my trial a commission *de lunatico inquirendo* adjudged Col. Mayo *insane* and he was taken to a lunatic asylum. Thereupon a new trial was asked for me on the ground that I was insane. That I was convicted on his testimony was not then denied, and if he was sane he was incompetent to testify and his evidence should have been set aside. But the motion for a new trial was over-ruled, and, an appeal being taken, the *nisi prius* judge in certifying the case to the appellate court declared that Col. Mayo was "not laboring under mental disability whatever," although "it was evident that he was, during the trial, drinking deeply." The supreme court of appeals in affirming the judgment of the lower court declared that the learned judge who presided at the trial * * * was of opinion that he [Col. Mayo] did possess the requisite share of understanding; and it would require very cogent and conclusive proof to the contrary to induce this court to interpose under such circumstances." In the light of which declaration it seems to me, Your Excellency, that in order "to induce this court to interpose" in my case it was required that my counsel should adduce such "cogent and conclusive proof" against the certificate of "the learned judge who presided at the trial" as they have been sufficient to sustain his impeachment by the legislature; which, of course, they did not do. And thus my right of appeal was virtually rendered nugatory and of none effect, might as well have taken no appeal, but just abided by the decision of the *nisi prius* court—namely, that Col. Mayo was not *crazy* but only *drunk*.

Long after the supreme court of appeals had rendered their opinion affirming the judgment of the *nisi prius* court, and I had been long incarcerated in the penitentiary, Col. Mayo, having been under treatment in the lunatic asylum about eighteen months, got better and was then indicted for the alleged larceny of certain public funds; the charge against me for that offence being in the meantime (in the absence of proof to sustain it) been dismissed by the prosecution *pro nolle prosequi*. A jury being empanelled for his trial, they ascertained from the evidence that he was *insane* on a certain day when it was alleged the larceny was committed (that day was but a short time prior to my trial) and that he was still *insane* many months afterwards—at the date, namely, of their verdict. This jury's verdict clearly implies, I think, that his insanity commenced at a period prior to my trial, and that it continued till long afterwards; clearly including the particular day and hour when he falsely testified at my trial. That this

is, indeed, the meaning of this verdict becomes entirely evident in the light of the fact that important part of the testimony on which the jury ascertained Col. Mayo's insanity, was that Gen. Johnson who deposed that one of the evidences of his insanity at the time indicated that he was "incapable of making a statement of facts"—Gen. Johnson's reference undoubtedly being to Col. Mayo's testimony at my trial, which Gen. Johnson KNEW was false and not statement of facts."

But, whether Col. Mayo was insane or not? is, after all, a question of *fact* which if made *before my trial* would have had a powerful effect upon my fate. I believe that even a suspicion of his sanity would have reversed the verdict of the jury which convicted me. Now, however, since my trial is all over and there is no way in which this question can be brought before a jury to try my case, it is perhaps useless to discuss the subject further. But I think it worthy of conclusion, to remark that this *question of fact* has been decided both ways as a *matter of opinion* and with the gravest consequences on each occasion. The *nisi prius* judge who presided at my trial was of opinion that he was not insane, and in consequence of his opinion I have been in the penitentiary ever since; but I have very good reasons for believing that if he were to express his full opinion he would say that Col. Mayo never has been insane. The verdict of the jury at Col. Mayo's trial was that he was insane, and in consequence of their opinion he was released from custody and has been at liberty ever since; but their opinion was based upon the testimony of many witnesses and made up from the developments of a special investigation extending through several days. For my own part, I only know that Col. Mayo testified falsely at my trial. In my own sad meditations when I try to determine for myself whether to attribute to Col. Mayo false swearing to insanity or inebriety, I have to choose between the verdict of the jury and the opinion of the judge. I would rather accept the verdict of the jury.

After the jury had pronounced Col. Mayo insane (up to which time I had been, as I am now, hopelessly enduring the hardships and humiliations of a convict's life) I was allowed to present a petition for executive clemency; and, in doing it, prayed for relief on the ground that Col. Mayo's insanity had now, at last, been ascertained *by a jury*, according to law—the only way in which it could be lawfully ascertained—and as I had been convicted on his testimony, it was demonstrable that I was not a guilty criminal but the unfortunate victim of a madman's vagaries. This petition was duly presented to Your Excellency about a year ago, and you then rejected it. It was Your Excellency's pleasure, on rejecting it, to give your reasons, which were published in the newspapers; and I was indulged with permission to read them. It appeared to me that Your Excellency had refused to pardon me, although I would not have been convicted "in the absence of Mayo's testimony" because (as it was represented to you by the *nisi prius* judge who presided at my trial and to whom my petition was referred) that there was evidence at my trial, exclusive of Mayo's testimony, going to prove me guilty of the larceny of public funds; being the alleged motive of the alleged forgery. Believing that such were Your Excellency's reasons for refusing my prayer for pardon, I sought to obviate the difficulty, and with an humble hope of doing so, I obtained permission and prepared another petition praying to be pardoned *upon the condition* that I should be tried for the alleged larceny of public funds and, if guilty, be punished for it. This petition Your Excellency also rejected. I refer to the subject here with a view of making an humble explanation.

Knowing full well, upon the testimony of a clear conscience, that I had committed no larceny of public funds, I felt entirely confident that now, with restored health and vigor of body and of mind, I should be fully able to defend myself successfully against any such allegations. Nothing, therefore, could afford me intenser satisfaction than a fair trial upon the real substance of that allegation. And when I prayed Your Excellency to pardon me upon the condition that I should stand that trial, I meant it in all good faith and ingenuous sincerity. In my petition, which I beg to state that fully expecting to be tried as speedily as the case could be gotten before the court, and designing to conduct my own defence, I had proceeded so far in getting ready for the trial as to prepare the instructions to the jury, which I would ask the court to give. I enclosed I submit for Your Excellency's inspection a copy of the said instructions (marked A.), and I think it will appear that they are such as the court would not refuse to give. I, of course, have full knowledge of all the facts, and intended to admit them all before the jury. I know that under these instructions my acquittal would be certain. May I not now in the hope that this humble explanation will receive Your Excellency's approbation?

But, to the end that nothing in my breast may be concealed, for I have no desire to conceal the least concealment, I beg leave to add a few words further before I leave this subject.

It is certainly true (and I have never denied that), that, in association with several of my associates, I did, while in office, effect the exchange of certain "consols" belonging to the sinking fund for "peelers" without paying into the treasury any *bonus* on account of said exchanges. In every instance in which I did this the operation was an actual physical exchange, on the basis of bond for bond of like denomination, and dollar for dollar of their face value; where the sinking fund, however, did not and could not *lose* a single cent. The theory on which I

my conduct was that "consols" and "peelers" both belong to the same generic class of bonds, and are equally valuable to the sinking fund. For the full payment of each, principal and interest, the good faith of the commonwealth is pledged, equally as to each. In conclusive proof, however, that my theory was correct, I need only point to the fact that the present commissioners of the sinking fund, and the secretary who succeeded me in office, entertain the same opinion, and are still acting upon it; which fact is shown by reference to their several annual reports, published since my incarceration.

It is also true (nor have I ever denied that, either), that, although the sinking fund did not, could not *lose* a single cent by means of these exchanges, yet I, and those associated with me, did *gain* some profit by them. But this profit was acquired not by reason of any *real* substantial difference between the intrinsic values of the two series of bonds exchanged, respectively, but solely by reason of the speculative schemes of the brokers in the stock markets of the country. They were speculating upon the good faith of the commonwealth towards her creditors, and we made a profit out of their lack of confidence in the people of Virginia. Ought this profit to have been paid into the treasury to the credit of the sinking fund? I think not, because if we have done it would have made the commonwealth a gainer of money by means of legislation which had engendered a distrust of her own good faith and honest purpose towards a portion—unprotected portion—of her creditors; which would have been disgraceful.

Now, at my trial the testimony as to these exchanges was very vague and some of it quite equivocal. It was well calculated to mislead and bewilder the jury as well as the judge. My counsel were ignorant of the real facts, and hence did not seek to elicit the truth by cross-examining the witnesses; besides, I observed that they were so wrapped up in their scheme to secure my "acquittal" by means of their brilliant "legal stratagem" that they were unmindful of nearly every really important point presented in the case. But I am entirely confident that if the facts in regard to these transactions had been laid before the jury they would have been convinced beyond a doubt and promptly have decided that my conduct in the premises, if even venial, was certainly not been *criminal*. And—even if some, indeed, had judged that I had acted in a *venal* manner, I think that in the light of justifying *precedents* and the persuasions of my participants my venality, even if imputed, would have been considered venial.*

I pass on now to an occurrence of more recent date, and I beg Your Excellency's patience the longer that I may briefly explain the same in conclusion of the statement I desired to make before coming to the subject proper of this letter.

After Your Excellency had rejected my second petition, I became hopeless of relief from my wretched situation. About this time it was suggested to me that if I would make known the names of the other parties concerned in my transactions, legal steps would be taken against them, and Your Excellency would pardon me in order to use my evidence for their prosecution. At first I declined to entertain the suggestion even for a moment; but my wretched situation (especially by reason of a peculiarly painful and delicate circumstance) becoming every day more and more intolerable, I consented to consider the matter and finally came to the following conclusion:

There was no way in which I could now get the facts before a jury in my own case and obtain a verdict on the question whether the exchanges of "consols" belonging to the sinking fund for "peelers" was criminal or not? Yet I felt thoroughly certain that if all the facts could be gotten before a jury, they would render a verdict in my favor. If now, therefore the other parties concerned in these transactions, having shared the profits, should now be tried for their participation, I had the same confidence as in my own case that they would be *acquitted* of criminality. But such a verdict in their case, on the merits of the question, would have a tremendous moral weight in exculpating me. With this view, and with a hope of a speedy liberation, I was at last induced to state the particulars of all these transactions, in detail, giving the names of all concerned.

Your Excellency has recent knowledge of, and will no doubt remember, the steps I took on leading to this conclusion and I need not rehearse them here. They, however, accomplished their purpose.

Along with a statement of all the facts as to these exchanges I also submitted a paper in the nature of a lawyer's brief reciting the facts and pointing out the evidence to prove that the report of the second auditor at my trial, as certified to the appellate court, was contrary to the truth.

My purpose in doing this is humbly explained as follows: My counsel had staked my cause

on the issue.—I deem it only due to myself to say that I have ever held myself bound to pay into the sinking fund the *bonus* on account of these exchanges, if ever the same should be adjudged to be due on the sinking fund. And I say now that whenever this shall be done, if ever, every cent of it ever paid by me shall be duly paid. I have looked upon the transaction as one of business, that is of a principal to principal from an agent, to be determined upon a settlement of accounts, and altogether of any thing like an *animus furandi*.]

upon their "legal stratagem" of showing that the warrant book of the sinking fund was a public record. And by reference to that point in reviewing events, it is now demonstrable my conviction and punishment resulted from the failure of this scheme of theirs. But it was the reason of the adverse decision of the supreme court of appeals on that particular question, namely, whether the warrant book of the sinking fund was a public record or not? my counsel's scheme did fail. But the supreme court of appeals in forming their opinion on this question were necessarily guided by the matters of fact involved, as the same were summed up and certified by the *nisi prius* court. Chief among these matters of fact, as it seems to me, which the appellate court must have considered in forming their opinion as to whether the warrant book was a public record or not, were the facts as to the character of the said warrant book and the purposes for which it was kept and used. This, indeed, is very obvious from the text itself of the appellate court's opinion. Now, the *nisi prius* court, in certifying to the appellate court the matters of fact involved, summed up those pertaining to the character of the warrant book and the purposes for which it was kept and used, and specifically certified that "the second auditor testified." And the appellate court, in rendering their decision that the warrant book of the sinking fund is a public record, expressly indicate that their opinion is based upon the character of the said warrant book and the purposes for which it was kept and used. The same were represented by the *nisi prius* court to have been stated by the second auditor in his testimony at my trial. Now, therefore, in proving, as I pointed out the evidence to prove the paper I submitted, that this testimony of the second auditor was contrary to the truth, I showed that I was warranted in asserting, as I did in my first petition for executive clemency, that "if the real facts had been certified to the supreme court of appeals their decision would have been the reverse of what it was. And now I humbly beg permission to submit to add that if all the real facts as to the affairs of the sinking fund and the manner in which the business was conducted were now to be fully and truly stated, it would be evident to any intelligent mind that the commonwealth could not be defrauded by any erasure that could be made in the warrant book in question. Moreover, in my opinion now, my counsel might have succeeded in the "legal stratagem" which they attempted at my trial, had they themselves been acquainted with the real facts and hence had known how to elicit the truth concerning the same by a comprehensive cross-examination of the second auditor and other witnesses. But, (it is difficult for myself to say it, here) had I been consulted and my judgment been as capable as usual of being so, I never would have consented to such a scheme of "defence" as was attempted in my behalf; for, although it might have saved me from the torment of this imprisonment, it would have left the moral stain of guilt upon me as fully as if I had pleaded guilty and suffered the penalty of the law.

Having now, as it were, cleared the way of approach to the subject proper of this letter, I beg Your Excellency's patience but a little longer that I may present a compendium of facts as I am confident will be convincing that it would be right and proper to pardon me.

I stated at the outset that my objective point is simply a speedy release from this imprisonment. In making this declaration, I desire and design most humbly to submit that, under existing circumstances, it is not practicable for me to *prove* that I am not guilty of the offense for which I was convicted. To do so would be to virtually reverse the verdict of a jury—a heavy task to the accused even when circumstances favor, but to one in my miserable situation, a task harder than any labor assigned to Hercules; for he, at least, was not shorn of his strength, but limited as to subsidiary resources. But, on rejecting my petition for executive clemency, a few days ago, Your Excellency was pleased to say that you had examined the case "with a strong and purpose to grant a pardon," if you could find "ground to rest it on;" and this has encouraged me to hope that there may be circumstances in my case—unrestricted by the vigorous rule of a court of law, as you are, sir, in exercising the sovereign powers with which the constitution has invested you—which may fulfill the required conditions of Your Excellency's merciful position now in my behalf. With the most humble and submissive spirit now, after a further endurance of the hardships and humiliations of a convict's life, I ask permission to renew my prayer for executive clemency, and in doing so most humbly beg to be allowed and show sufficient "ground to rest it on." I think it may be likely, for it would be but natural, that there may be such grounds which may have escaped Your Excellency's observation, pre-occupied as you are, no doubt, by a multitude of public matters whose demands upon your time are too pressing to permit you to devote much of it to the consideration of my case; but which, alas, even a glimmer of hope amid the gloom of wretchedness which life presents for me would magnify beyond the possibility of escaping the closer scrutiny of my noble meditations, and

"The patient search and vigil long"

of my wretched yearnings for relief. Your Excellency was pleased to mention my "cultured and former social position," as circumstances which render my punishment "peculiarly painful." These are the circumstances with reference to which I beg to state the first point—first, in order

use mentioned by Your Excellency, among the grounds for pardon which I beg humbly to present to Your Excellency's consideration. I beg leave, Your Excellency, submissively to say that in the school in which I acquired the very cultivation with which I am credited I learned that it is the duty of a good citizen under all circumstances to yield implicit obedience to the laws of his country administered by her constituted authorities; and I have never seen the day when I was not willing cheerfully to practice in my own person this precept of my cultivation. And I am very thankful that I am now able, if Your Excellency desire it, to adduce the testimony of those who have been in immediate authority over me ever since my incarceration that during all this stretched period—in many ways the most trying period of my life—I have never (to use their expression) been known "to do or say anything unbecoming a highminded and honorable Christian gentleman."

I have now been imprisoned nearly a year longer than the minimum term fixed by law for punishment of the offence of which I was convicted, and considerably longer than the average term to which offenders convicted of like offences in the courts in the various parts of the state are generally sentenced. In view of my efforts during all this term of imprisonment to lead such a life that my conduct might be regarded as exemplary; and in view of the circumstances, to which Your Excellency adverted, which render my punishment "peculiarly painful" may I not say, in my miserable situation, fairly and justly claim the benefit of any consideration which would warrant justice in tempering my further punishment with mercy? Does not the spirit of the institutions inculcate the theory that in inflicting the penalties of the law consideration should be given to the *pœna damni*—the punishment of *loss*—as well as the *pœna sensus*—the punishment of *suffering*? Then, surely I may submissively remind Your Excellency that in losing an honorable name among my fellow-men; in losing an honorable place in society; in losing the cherished hopes and aspirations of my life, I have suffered more than the extreme penalty the law—*death* itself—could inflict on me. Ah, sir, I would cheerfully encounter all the mere physical hardships of a convict's life for twenty years, or even longer, if by that means I might

"———ravel out my weaved-up follies,"

start the world afresh!

By all this terrible wreck of life which I have suffered has not the majesty of the law been defied? And may not mercy now interpose and plead with Your Excellency to exercise the beneficent power which the constitution has conferred on you, and remit the remainder of my imprisonment? Surely the crime of peculation—which in its true analysis is virtually the crime imputed to me—is not so prevalent in Virginia as to require such extreme severity in inflicting punishment according to the very letter of the sentence in my case as a warning to deter others from it. Surely my previous life and reputation were not of such a character as to make it necessary to use the utmost rigor of the law in order to adequately punish the first offence ever imputed to me. Do not, indeed, the peculiar circumstances of my case make it one to which justice may, perhaps, apply her maxim: "*Summum jus, summa injuria*?"

It is very far from my desire to present any mere technicality of the law as a ground on which to ask Your Excellency to pardon me. Yet there is a notable point in my case, involving the construction of a statute, which I wish submissively to mention as worthy perhaps of some consideration from a legal stand-point. The statute to which I shall refer, I think it likely, was shown to my counsel at my trial, which was the reason, I presume, that they did not get the law to quash the indictment on the grounds which it presents. I am not a lawyer, and, besides, the circumstances, I may be prone to lean too much in my judgment in favor of myself in the construction of this statute, and it is, therefore, with the utmost submissive deference to Your Excellency's superior legal acumen that I venture now most humbly to present the subject, as taken from the code of 1873, chapter 190, section 22, as follows:

Section 22.—If a clerk of a court, or other public officer, fraudulently make a false entry, or alter, secrete, or destroy any record in his keeping or belonging to his office, he shall be confined in jail not more than one year, and fined not exceeding one thousand dollars."

Now, the indictment on which I was tried alleged that I was a public officer, the "secretary" of the commissioners of the sinking fund; the book, or record, alleged to be the subject of the crime imputed to me is described as "the warrant book of the said sinking fund;" the fact alleged is "falsely and corruptly erasing the figure 1" etc., etc., "with intent to defraud."

It seems to me, Your Excellency, that the specifications marshaled in this indictment are precisely such as fit the case to that class of offences against the law the punishment of which is provided for under the statute I have quoted. And, if so, then, whether guilty or not guilty, I have already been excessively punished beyond all measure of the excess. But, as I have said, with the most submissive deference that I have ventured to introduce this point of law, and I will not presume to make any argument upon it, but submissively leave the subject, humbly begging Your Excellency to consider it, and feeling that I shall be fully satisfied if, in Your Excellency's present consideration of my case, you give this point of law whatever moral weight, it may be entitled to.

In conclusion, I beg Your Excellency to allow me to add that there are certain pressing circumstances, of a peculiarly painful nature some of them, and all of them obliged on account their nature to have a life-long effect of the gravest importance, which render my speedy release essential to my future, even comparative, peace of mind and usefulness. Tortured by these circumstances I cannot resist the impulse to appeal to the humane feelings of Your Excellency's heart in entreating you now to exercise in my behalf the munificent power with which you are invested, and terminate my sufferings at once, at least to the extent of removing the obstructing and allowing me a chance, without further delay, to commence a manly struggle to redeem the blighted prospects of my life—as far, indeed, as that can now be done. At the best, I shall have to re-enter life at an advanced stage of manhood, penniless and comparatively friendless; with no accumulation to draw upon save that only of a varied experience in life; virtually ruined every human resource, and with but little left to sweeten life and encourage effort except the hope of God's favor as a chastened spirit may humbly entertain. But these very circumstances make even a year of TIME in the brief span of human life inestimably valuable to me, and I beseech you with distressing solicitude now in begging it of Your Excellency as a mere item of *salutem* from the wreck of my life.

Most respectfully, Your Excellency's

Very obedient, humble servant,

WILLIAM D. COLEMAN

THE FOLLOWING ARE THE PROPOSED INSTRUCTIONS TO THE JURY, REFERRED TO IN THIS PETITION AS MARKED "A:"

COMMONWEALTH
VERSUS
WILLIAM D. COLEMAN.

PROSECUTION FOR LARCENY
OF PUBLIC FUNDS.

PROPOSED INSTRUCTIONS TO THE JURY.

1. In a prosecution for larceny, unless it be proved, or admitted, that an actual loss has been sustained by direct reason of the fact alleged to be a larceny, the accused cannot be convicted.
2. If by anything she does, or omits to do, the commonwealth causes, or permits, her good faith and honest purpose towards her creditors to be distrusted and to become a subject of speculation it is against sound public morals for her to receive any pecuniary profit therefrom either directly or indirectly; if she were a citizen it would be fraudulent and unlawful.
3. In a prosecution for larceny, if any state bonds be involved, their value is their face value; unless they could be sold in overt market for more than their face value, and then their value is their market value.
4. In the case of a public officer entrusted with bonds issued by the commonwealth and longed to her: If when duly called upon, he produce bonds of the same generic character though not the same identical bonds, amounting to the same amount (the face value), he is discharged his trust.
5. Unless the jury believe that the evidence proves that the accused did actually take and fraudulently convert to his own use some of the bonds purchased by the commissioners of the sinking fund, or transferred to the sinking fund by the board of public works (such being the only methods by which bonds did come into the sinking fund); or that he did, or caused to be done, some act which did, or of necessity, or naturally, might have diminished the amount (face value) of said bonds, they must find him not guilty.

To this letter Governor Kemper never deigned to make any response if he did, I never heard of it. Whether he ever even read it or not, I do not know.

After the assembling of the legislature that winter I was again visiting several of the members, formerly personal friends of mine, who told me of various efforts they had, unsolicited, made in my behalf. I had kept a copy of my letter to Gov. Kemper and now showed it to some of these members, and they read it. The comment of every one was that if the governor rejected my prayer for release as made in that letter it must be because of a prejudice against me on account of something not embraced in the charge on which I had been tried. And of these gentlemen, I remember—it was Dr. Henry E. Smith, then a member of the house of delegates from Amherst county,—took the copy of the letter away.

and kept it several days, in order to consider it carefully. When he brought back, at his next visit, he said it had deeply impressed him, and he had sought interview with Gov. Kemper and tried to prevail upon him in my behalf; but without effect. He told me that, in his opinion, the real reason of the governor's refusal to pardon me was that he (Gov. Kemper) regarded me as "one of Walker's pets." It was true, indeed, that I had been an ardent friend of Gov. Walker both before and after his election, and he was always a friend to me also; I have never been the "pet" of any man, and I told Dr. Smith so on the 1st. Gov. Kemper's animosity towards his honored predecessor has been a matter of public notoriety, having been evinced even in his first message after assuming the gubernatorial office; but if he allowed this animosity to blind him to sense of right and justice towards an humble friend of Gov. Walker, so miserably situated as I was then, it would show a pitiful spite unprecedented in a Governor of Virginia. And I would fain imagine that Dr. Smith's opinion was quite correct, or, if it was, that Gov. Kemper was unconsciously the slave of his own passions. But from all the circumstances I became convinced that nothing could ever come to me as long as Gov. Kemper had the power to prevent it. I hasten now to conclude this communication. Having abandoned all hope of release before the expiration of the period for which I had been sentenced, I now to endure my wretched fate with fortitude and patient philosophy. In the following spring, however, as I was informed, another petition, drawn by myself, Mr. Wise, was presented to Gov. Kemper urging him to pardon me. It was signed, I was told, by nearly all the conservative members of the legislature, a large number of citizens of Danville and Pittsylvania county, and also by many prominent citizens of Richmond; also by a number of ladies who had personally interested themselves in my behalf. But I never saw this petition, was not consulted on it, except in a passive sense, and, although grateful for it, had no idea that it could avail anything. Its only fruit was another one-sided and unfair version of my case from Gov. Kemper's pen, which he embraced the opportunity to write and give the newspaper reporters for publication, to further injure me in public opinion.

There was an incident however in the presentation of this petition which I wish to relate just here. It was presented to the governor by a number of the members of the legislature in a body, who were accompanied by Gen. R. Lindsay Walker, Capt. John A. McCaull, and perhaps other gentlemen kindly disposed towards me. After the petition had been presented and when the gentlemen who presented it were retiring, Gov. Kemper called Capt. McCaull back and, in effect, told him not to solicit my release from prison, hinting that if I were released during the then pending political campaign was over I would "use my pen" as a certain prominent aspirant for the conservative nomination for governor. The same evening Col. William Powell, a member of the legislature from Frankfort, came to see me at the request of Capt. McCaull and told me what I have just related. I promptly disavowed any such intention and told Col. Powell that it was ridiculous to attribute such an idea to a person in my wretched situation. In answer to his suggestion, I put my disavowal in writing and, as I have since learned, it was delivered to Gov. Kemper next morning by Gen. R. Lindsay Walker. I hoped that the governor's apprehensions, though before it reached him he had seen the petition, and my continued confinement did not secure the success of my candidature for whom he was so solicitous. Yet, even now I cannot but think it absurd in the "governor of the commonwealth" to be afraid of the politeness which might be wielded by the pen of "a convict in the penitentiary." I will now pass on to the end of this communication. The term of imprisonment to which I had been sentenced was reduced several months for "good

conduct" as provided by the statute. Consequently, it expired on the 26th October last. A few days before its expiration, my aged father came to Richmond to welcome me back to liberty and the dear ties of my family again. I had an idea that he might secure for me a boon, which would be valuable to me on returning to the world again; and, with that idea, addressed the following letter to Gov. Kemper:

LETTER TO GOVERNOR KEMPER FROM T. COLEMAN.

TO HIS EXCELLENCY, JAMES L. KEMPER, }
GOVERNOR OF VIRGINIA. }

RICHMOND, OCTOBER 25th, 18

Sir:—

I have come to Richmond, from my distant home in another state, to get you to consider the case of my son, William D. Coleman, in its present aspect. It has not been practicable for me to approach you in his behalf at an earlier date because my exhausted resources have confined me at home in an arduous struggle to "keep the wolf from the door"—a struggle in which I have sadly missed the assistance of my son, always liberally rendered, whenever desired, from his childhood up to the hour when he himself was made helpless. Even now I have been enabled to take this step only by making the utmost exertion.

You are a father yourself, sir, and were I to indulge the feelings of my heart no doubt I would in your own breast allow that from the very nature of a father's affection for his son, a beloved son like mine who from his very babyhood, I may say, has always been affectionate to his parents, and whose filial devotion has made them the sharers of every success in life and whose fortune has ever favored him—I have reason enough in the very circumstances of the case to feel something harder to bear than ordinary grief in contemplating the fate of *my* son. It is not my purpose to permit any feeling of either grief or bitterness on account of the irreparable past to appear in this humble petition to Your Excellency. I am an old man, sir, already beyond the allotted term of "three score years and ten," and one whose life has been almost "as full of sorrows as the sea of sands." It would be foreign to my nature now, I trust, as yet as unnatural at my age to harbor animosities against my fellow man or be swayed by the sinister promptings of harmful human passions. Yet am I subject still to a man's emotions so far at least as they relate to future earthly hopes and fears of what may yet befall in life. Actuated by this kind of emotion in approaching Your Excellency now, I come to beg your consideration of my son's case in its present aspect.

He is now upon the eve of release from his long incarceration. The period for which he was sentenced to a harsh and degrading punishment will in a few hours be ended. So far the suffering of mere physical hardship for a term of years can do it, he has expiated his alleged offence against the law. But there still remain certain civil disabilities, as they are called, consequent upon his conviction which may follow and fetter him all through life, unless Your Excellency now interpose the munificent power, with which the constitution has clothed you, for their remission. I beseech Your Excellency to do so. I entreat that you will now, only a few hours in advance of the moment of my son's release from his long imprisonment issue a pardon to him, remitting the civil disabilities to which he is still liable.

It were needless, I think, to offer argument in support of this petition. I will but briefly state its object and the grounds on which I urge it. The first, indeed, is obvious. It is that in regaining personal liberty he may be afforded as fair a chance as possible to redeem his blighted life, as far as that can now be done. This chance will not be afforded him if Your Excellency compel him to remain under these civil disabilities. They will harass him at every turn of a life's pathway, enervate his every effort, and perhaps reduce him to despondency, unless Your Excellency mercifully remove them now.

The grounds on which I venture to urge this prayer upon Your Excellency are two-fold: their bearing, namely, his previous high character and his good conduct during the whole period of his imprisonment. The first I might rest, perhaps, upon Your Excellency's personal knowledge of the fact. But to the end that the record may on no point be incomplete, I submit herewith a letter (marked A) from a distinguished gentleman who, at the time he wrote, it occupied the highest position in the gift of the people of Virginia save only the exalted station of Your Excellency. In my son's private correspondence, comprising several hundred letters received during the decade preceding his imprisonment, there is abundance of testimony on this point, direct and inferential, from many of the most illustrious gentlemen of the period, but I have chosen this one to submit with this petition for the reason indicated. What it implies and it expresses will, I trust, favorably incline Your Excellency to grant this petition and thus rescue my son from the sad fate of a political helot among a people for whose civil rehabilitation and community he has unsparingly expended the best efforts of his life.

As to his conduct during his imprisonment I have been kindly favored by the authorities of prison with a certificate herewith submitted (marked B) which I trust will be sufficient testimony on that subject.

Entreating Your Excellency's prompt bestowal of the boon for which I have herein prayed,
Very Respectfully, Your Excellency's
Humble servant,

T. COLEMAN.

EXHIBIT, MARKED (A.)

"FREDERICKSBURG, OCT. 25th, 1871.

L. WM. D. COLEMAN.

My Dear Sir:—

My absence at the Synod at Lynchburg prevented my receiving your letter replying sooner.

I am sure you credit me as sincere when I say that it would be very gratifying to me to see clerk of the Senate; and very gratifying to my feelings to give you my personal aid in your efforts to obtain it, and that I do distinctly recognize you as one of the Virginians whose labors and counsels in the critical and imperilled *crises* of the state were valuable, and entitled to recognition. But my position towards the clerkship is an embarrassed one. It does not leave me at liberty. For two winters, and during arduous work I was daily and hourly in intimate personal intercourse with Mr. Davis. I could not help recognizing and TESTIFYING to his undoubted *efficiency* and *fidelity* and *value* as an officer, as well as become personally attached to him as a friend. The result of this is that I do not feel that I could (or *ought* to) take ground against his election even in favor of one whom I deem worthy of the place, and would be glad to aid in procuring it.

This is the "fix" I am in. I know your generous and honorable nature will appreciate my position rightly, and that I am,

Sincerely Your Friend,

JNO. L. MARYE, JR."

EXHIBIT, MARKED (B.)

"VIRGINIA PENITENTIARY, RICHMOND, October 24th, 1877.

William D. Coleman has been under my immediate supervision ever since his incarceration and I take pleasure in testifying to his invariable good conduct, and faithful performance of duty assigned him.

J. F. MEENLEY,
Officer in Charge, Ward No. 3."

Being employed as guard in Ward No. 3, I have had daily observation of William D. Coleman and I fully concur with Mr. Meenley in the above.

WM. "T. WHITE."

We, the undersigned, officers of the Virginia Penitentiary concur in the above statement.

C. P. CROSS,
M. W. STROTHER,
W. P. SEAY,
D. S. CATES,
J. W. AYRES."

My father's communication to Gov. Kemper, was accompanied by the following unsolicited letter:

L. KEMPER, City.

"RICHMOND, October 25th, 1877.

*Sir:—*This will be handed you by Mr. T. Coleman (the father of W. D. Coleman). I know him to be a most estimable man. He has written you with a petition asking that you will pardon his son (whose time expires to-morrow,) which, I understand, will relieve him of the disabilities incurred. As good may come to you, I should it be your pleasure to grant the favor, I trust it will be your pleasure to grant it. With great regards, I am,

Yours truly,

A. Y. STOKES."

S. I have written this letter, at my own suggestion, from the interest I feel in his case.
A. Y. S."

When seeking the governor to present these papers, my father was accompanied by Col. A. S. Buford and Hon. Charles Campbell, old friends of his, who, as I have understood, joined him in his petition. My father has since told me that Gov. Kemper put him off with the suggestion that my "disabilities" could be relieved at any time after my release, even years afterwards; but took the papers and promised to "consider" them. Just before the expiration of his term of office as I afterwards learned from the secretary of the commonwealth he had them filed in the executive office, marked "REFUSED." From which I infer that what I conceive was the bitterness of the ex-governor's disposition towards me remained unabated even to the end of his public life. I hope he has not retined it in the retirement of private citizenship to which he has been returned.

It is pleasing, and I think, but proper, to add, in this connection, that, since this communication to you, Mr. Wise, was prepared, His Excellency, Governor Holliday has executed and caused to be sent me an instrument removing all the political disabilities to which I might be liable, and restoring me to all the rights and privileges of a citizen. This was done without any petition from me, though probably prompted by friends, and its graciousness has made it all the more gratifying to my feelings. On receiving it, I sent the following response to His Excellency:

LETTER FROM WILLIAM D. COLEMAN TO GOVERNOR HOLLIDAY.

"DANVILLE, July 6th, 1874

HIS EXCELLENCY, F. W. M. HOLLIDAY,
GOVERNOR OF VIRGINIA:

Sir:—From the office of the secretary of the commonwealth, I have had the honor of receiving an instrument, executed by Your Excellency, removing the political disabilities which I was held in consequence of the verdict of the jury, at my trial for an alleged forgery in the hustings court of the city of Richmond, at the April (should be March) term thereof the year 1874, and restoring me to all the rights of a citizen.

I beg Your Excellency to believe me cordially grateful for this exercise in my favor of the munificent power with which, under their organic law, the people of Virginia have clothed you, and I humbly pray the Supreme Ruler that by no act of mine may Your Excellency ever have occasion to regret having extended this gracious relief to me.

But, whilst thanking Your Excellency with a very grateful heart, I humbly beg leave to make a reference to a certain point in my unhappy case, mention of which in this connection, though possibly be important to me at some future day, should be spared me. The point is brief and as follows: The specifications of the offence imputed to me and marshaled in the indictment on which I was tried are precisely such as fit the case to that class of offences against the law for the punishment for which (even if I had been guilty) is prescribed by the provisions of chapter 22, section 22, of the code of 1873. So that, whether guilty or not guilty, I had not incurred political disabilities as the same are prescribed by the constitution, because the fact with which I was charged in the indictment on which I was tried was a misdemeanor and not a felony. At some future day, it be practicable to procure the enactment of an act of assembly, or the passage of an ordinance of a sovereign convention to expurgate the record of the court in my case, I presume Your Excellency's munificence in rehabilitating me now, by executive action, will not debar me from the benefit of such an act of assembly, or such an ordinance of a sovereign convention.

Reiterating my heartfelt gratitude to Your Excellency, I am,

Very Respectfully,

Your Excellency's Obedient Servant,
WM. D. COLEMAN

You will, therefore, please take notice, Mr. Wise, that, in making this communication to you now, I am, by virtue of Governor Holliday's action, exercising the same rights and may be held to the same responsibilities, under the law as any other citizen of the commonwealth of Virginia.

I have now brought my sorrowful story to an end. In concluding it, I

indulgence but for a moment to refer, subjectively, to that wretched period of my life which I passed in captivity. Conscious that I had committed no crime, I reflected that this degradation was undeserved and endeavored to bear it with COURAGE, which is the twin-brother of VALOR. When my native state was invaded I volunteered as a private soldier to defend her people from oppression, and then, in battle, evinced enough of the latter to secure the unsolicited recommendation of my whole regiment for my promotion from a sergeantcy to the rank of a field officer; and now that the vicissitudes of fortune had made it my lot to suffer oppression in my own person, under the forms of law, as administered by the agents of the same people, I humbly bowed to the will of God and schooled myself to the exercise of the former. At all times deeming it the duty of a good citizen to yield implicit obedience to the constituted authorities of his country, I governed myself accordingly, and at the end received the following certificate:

A CERTIFICATE.

W. D. Coleman has been employed in the Weave Shop ever since his incarceration in the Penitentiary and has been daily under my immediate eye. I have found him at all times carefully and faithfully attentive to his duties, performing his labor with diligence and remarkable skill. As to his conduct, I have never known him to do or say anything that would be unbecoming in an honorable and highminded Christian gentleman.

J. F. MEENLEY,
Officer in charge, Ward No. 3.

Being employed as guard in the Weave Shop, I have had daily observation of W. D. Coleman, and I fully concur with Mr. Meenley in the above.

WM. T. WHITE.

Ah, sir, it is true now, as it was two hundred years ago when Lovelace sang:

"Stone walls do not a prison make,
Nor iron bars a cage;
Minds innocent and quiet take
That for an hermitage."

In conclusion, Mr. Wise, I would earnestly renew the solicitation I made of you at the outset. I have now returned to my native city, and resumed the avocation (that of a newspaper editor) in which I commenced life on the same day when but a boy. Encouraged by the kindly regard of old friends and kindred I have recommenced life among them. Whatever may be thought as to my former connection with the affairs of the sinking fund of the commonwealth, seems to be generously admitted that, whether guilty or not guilty of the offence imputed to me, I have suffered enough to be forgiven.

One thing, at least, to be accomplished by this publication will afford me a very happy and grateful satisfaction: It is that it will prove to these generous friends that I never committed the crime for which I have been made to suffer so much wretchedness; and that in adversity and under oppression I have borne myself bravely, in such a manner, I trust, as not to forfeit their respect and kind regard. But the fraud, or rather the larceny, by which the commonwealth has lost thousands of dollars by the "double-funding" of her bonds had no connection with the affairs of the sinking fund, and was not revealed until after I had suffered my miserable fate. But now this larceny is imputed to me, or at least a participation in it. I therefore respectfully demand that you, Mr. Wise, as the executing officer of the law, shall direct the attention of the grand jury to this subject. If I am guilty let me suffer the penalty of the law; if I am not guilty I shall be judicially vindicated.

I am, sir, very respectfully,

Your obedient servant,

WILLIAM D. COLEMAN.

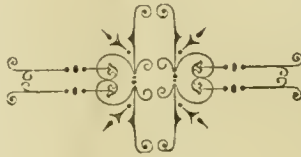
ADDENDUM,

It is but proper to explain the delay in the publication of this communication. It is due to causes altogether beyond my control. It was written and I have anxiously and earnestly striven to get it published months and months ago but could not do it a day earlier than the present. I trust that, with this explanation, tardiness of its appearance will not be permitted to prejudice its consideration.

WILLIAM D. COLEMAN

ERRATA,

On page 27, in the eighteenth line from the bottom, in place of "Rise and Decline of the Roman Empire" read "Decline and Fall," etc. The intelligent reader will easily correct for himself the few other errors in the typography.



Trials.

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